(6)

No. 98-9537

Supreme Court, U.S.
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In The

Supreme Court of the United States

JUATASSA SIMS,

Petitioner,

vs.

KENNETH S. APFEL,
Commissioner of Social Security,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed: May 19, 1999
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TABLE OF CONTENTS

Page

Docket Entries:

U.S. District Court for Northern District of Mississippi, Case No. 2:97CV94-B-B 1

U.S. Court of Appeals for the Fifth Circuit, Case No. 98-60126 4

Claimant's Memorandum to the Administrative Law Judge 8

Decision of the Administrative Law Judge dated March 19, 1996 25

Letter to Appeals Council dated September 12, 1996 50

Action of Appeals Council on Request for Review dated May 13, 1997 71

U.S. Magistrate Judge's Report and Recommendation dated November 25, 1997 in *Sims v. Commissioner*, Case No. 2:97CV094-B-B (N.D. Miss. 1997) 74

Final Judgment dated January 12, 1998 in *Sims v. Commissioner*, Case No. 2:97CV94-B-B (N.D. Miss. 1997) 83

Fifth Circuit decision dated November 6, 1998 in *Sims v. Apfel*, Case No. 98-60126 (5th Cir. 1998) 85

Fifth Circuit Order dated February 18, 1999 denying Petition for Rehearing in *Sims v. Apfel*, Case No. 98-60126 (5th Cir. 1998) 87

Supreme Court Order Granting Certiorari and Motion to Proceed In Forma Pauperis 88

APPEAL CLOSED
SS

U.S. District Court
Northern District of Mississippi (Delta)

CIVIL DOCKET FOR CASE #: 97-CV-94

Sims v. Callahan - Filed: 05/23/97
Assigned to: Judge Neal B. Biggers, Jr.
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Nature of Suit: 863
Jurisdiction: US Defendant

Cause: 42:405 Review of HHS Decision (DIWW)

5/23/97	1	COMPLAINT for Review of Final Decision of Sec. of HHS FILING FEE $150.00 RECEIPT # 47777 CASE REFERRED to Magistrate Judge Eugene M. Bogen; Case Assigned to CJRA Track: Administrative (tab) [Entry date 05/27/97]
5/23/97	___	NOTICE OF ASSIGNMENT Judge Neal B. Biggers Jr. and Magistrate Judge Eugene M. Bogen (tab) [Entry date 05/27/97]
5/23/97	___	SUMMONS (ES) issued for John J. Callahan, Acting Commissioner of SSA, Attorney General Janet Reno, Civil Process Receiver, U. S. Attorney (tab) [Entry date 05/27/97]
6/23/97	2	SUMMONS Returned Executed as to John J. Callahan, U.S. Attorney (Alfred E. Moreton III), U.S. Attorney General (Janet Reno) 6/9/97 Answer due on 6/29/97 for John J. Callahan (sta)

8/1/97	3	ANSWER & TRANSCRIPT to Complaint by John J. Callahan (Attorney Ralph M. Dean) (tab)
8/13/97	4	ORDER, that the plaintiff shall file her brief by 09/11/97; within 30 days of service of plaintiff's brief, defendant shall file a brief in response. Plaintiff may file a brief in reply to the brief of defendant within 10 days of service of defendant's brief; setting Social Security ORAL ARGUMENT for 2:30, 11/20/97, in Oxford, before Magistrate Judge Eugene M. Bogen; (signed by Magistrate Judge Eugene M. Bogen on 08/11/97); Date of Entry: 08/13/97. (nfs)
9/11/97	5	MEMORANDUM by Jautassa Sims in support of [1-1] social security complaint. (nfs)
10/15/97	6	MEMORANDUM by John J. Callahan in support of Commissioner's decision. (nfs) [Entry date 10/17/97]
11/20/97	___	RECEIVED tape of social security hearing held 11/20/97. (tab)
11/20/97	___	Social Security ORAL ARGUMENT held on 11/20/97, Oxford before Magistrate Judge Eugene M. Bogen. (tab)
11/20/97	7	CIVIL MINUTES for: Social Security Hearing Held 11/20/97, Oxford before Mag. Judge Bogen Court Reporter: Tape #2 Recommendation that the Commissioner be affirmed. (tab)
11/25/97	8	REPORT AND RECOMMENDATIONS recommended that the decision of the

		Commissioner be affirmed and the complaint dismissed with prejudice of Magistrate Judge Eugene M. Bogen. Case no longer referred to Magistrate Judge Eugene M. Bogen Objections to R and R due by 12/8/97 (sta) [Entry date 11/26/97]
12/12/97	9	OBJECTION to [8-1] report and recommendations by Juatassa Sims (sta) [Entry date 12/15/97]
1/12/98	10	FINAL JUDGMENT, ADOPTING and APPROVING [8-1] report and recommendations, Dismissing this action with prejudice; (signed by Judge Neal B. Biggers Jr. on 01/09/98); COB #34, pgs. 135-136; Date of Entry: 01/12/98. (nfs)
1/12/95	___	Case Closed (nfs)
3/2/98	11	NOTICE OF APPEAL of [10-1] order Dismissing this action with prejudice by Juatassa Sims. FILING FEE $105.00; RECEIPT #50522. (nfs) [Entry date 03/03/98]
3/2/98	___	Notice of Appeal and certified copy of docket to USCA: [11-1] appeal by Juatassa Sims. (nfs) [Entry date 03/03/98]
3/9/98	___	Transcript requested [11-1] appeal by Juatassa Sims. (nfs)
3/11/98	___	Certified and transmitted Record on Appeal to U.S. Court of Appeals: [11-1] appeal by Juatassa Sims. (nfs)

3/11/98 ___ USCA Case Number, Re: [11-1] appeal by Juatassa Sims. USCA NUMBER: 98-60126.

GENERAL DOCKET FOR
Fifth Circuit Court of Appeals

Filed: 3/9/98

Court of Appeals Docket #: 98-60126
Nsuit: 2863 Social Security: DIWC/DIWW
Sims v. Apfel
Appeal from: Northern District of Mississippi, Oxford

Lower court information:

District: 0537-3 : 2:97-CV-94-B
Ordering Judge: Neal B Biggers, Jr, Chief Judge
Date Filed: 5/23/97
Date order/judgment: 1/12/98
Date NOA filed: 3/2/98

3/9/98 Social Security case docketed. NOA filed by Appellant Juatassa Sims. [98-60126] (kgl)

3/9/98 Record requested from district court. [98-60126] ROA due on 3/24/98. (kgl)

3/16/98 Record on appeal filed. Pleadings: 1 vol Transcripts: 1 vol. [98-60126] ROA ddl satisfied. (cgl)

3/26/98 Appearance form filed by Chantal J Harrington for Appellant Juatassa Sims, Gary R Parvin for Appellant Juatassa Sims. [98-60126] (kgl)

3/26/98 Appearance form filed by James William Warren for Appellee Kenneth S Apfel, Clavin D Buchanan for Appellee Kenneth S Apfel. [98-60126] (kgl)

4/10/98 Briefing notice issued. [98-60126] A/Pet's Brief due on 5/20/98 for Juatassa Sims. (cgl)

4/10/98 Record on appeal released to attorney Gary R Parvin for Appellant Juatassa Sims. Volumes: 2. [98-60126] (cgl)

4/10/98 Appearance form filed by Elyse S Sharfman for Appellee Kenneth S Apfel, Scott E Heffington for Appellee Kenneth S Apfel. [98-60126] (kgl)

4/10/98 Appearance form filed by Mary Ann Sloan for Appellee Kenneth S Apfel, Dennis R Williams for Appellee Kenneth S Apfel. [98-60126] (kgl)

5/20/98 Appellant's Brief filed by Appellant Juatassa Sims. Copies of Brief: 7 # of pages: 44. Lines of text: 1239 Date of COS: 5/19/98 Sufficient [Y/N]: n Bohr needs an appearance form. [98-60126] A/Pet's brief ddl satisfied. E/Res's Brief due on 6/19/98 for Kenneth S. Apfel. Sufficient Brief due on 6/1/98 for Juatassa Sims. (trm)

5/20/98 Record excerpts filed by Appellant Juatassa Sims # of copies: 4 Sufficient [Y/N]: n needs certificate of service [9-60126] Sufficient Record Excerpts due on 6/1/98 for Juatassa Sims (trm)

6/9/98 Extension granted by phone until: 7/3/98 to file appellee's brief for Appellee Kenneth S. Apfel. [98-60126] (cnf)

6/16/98 Confirmation letter filed by Appellee Kenneth S Apfel confirming an extension of time to and including 7/3/98 for confirming an extension

of time to and including 7/3/98 for filing appellee's brief. [98-60126] E/Res's Brief ddl updated to 7/3/98 for Kenneth S Apfel. (kgl)

6/17/98 Record on appeal forwarded by Sarah Harriet Bohr for Appellant Juatassa Sims to Scott E Heffington for Appellee Kenneth S Apfel. Volumes: 2 [98-60126] (ksw)

7/1/98 Appearance form filed by Sarah Harriet Bohr for Appellant Juatassa Sims. [98-60126] Sufficient Brief ddl satisfied. (kgl)

7/1/98 Record Excerpts made sufficient by Appellant Juatassa Sims [98-60126] Sufficient Record Excerpts ddl satisfied. (ksw)

7/2/98 Appearance form filed by Joseph P Palermo for Appellee Kenneth S Apfel. [98-60126] (kgl)

7/6/98 Record on appeal returned to 5CCA. Volumes: 2 [98-60126] (trm)

7/6/98 Appellee's Brief filed by Appellee Kenneth S Apfel. Copies of Brief: 7 # of pages: 29. Date of COS: 7/2/98 Sufficient [Y/N]: y. [98-60126] E/Res's Brief ddl satisfied. Reply Brief due on 7/20/98 for Juatassa Sims. (trm)

7/7/98 The attorney Elyse S Sharfman for Kenneth S Apfel, attorney James William Warren for Kenneth S Apfel not participating in case. [98-60126] (trm)

7/14/98 Unopposed extension granted by phone until: 7/27/98 to file reply brief for Appellant Juatassa Sims. [98-60126] (cmb)

7/17/98 Confirmation letter filed by Appellant Juatassa Sims confirming an extension of time to and including 7/27/98 for filing reply brief.

[98-60126] Reply Brief ddl updated to 7/27/98 for Juatassa Sims. (kgl)

7/20/98 The attorney Ralph M Dean for Kenneth S Apfel not participating in case. See 7/20/98 letter in file. [98-60126] (trm)

7/27/98 Reply brief filed by Appellant Juatassa Sims. Copies of Brief: 7 # of pages: 15. Date of COS: 7/25/98 Sufficient [Y/N]: y. [98-60126] Reply Brief ddl satisfied. (trm)

11/6/98 Opinion filed. Issue Mandate due on 12/28/98. [98-60126] (ymj)

11/6/98 Judgment entered and filed. [98-60126] (ymj)

12/21/98 Petition filed by Appellant Juatassa Sims for rehearing. # of copies filed: 4 [1147342-1] Issue Mandate ddl canceled. [98-60126] (kgl)

2/18/99 COURT Order filed denying petition for rehearing [1147342-1] Issue Mandate due on 2/25/99. Copies to all counsel. [98-60126] (mrw)

2/26/99 Mandate issued. Approved BOC Issued (Y/N)?: n [98-60126] Issue Mandate ddl satisfied. (sds)

2/26/99 Record on appeal returned to USDC. Volumes: 2. [98-60126] (sds)

6/1/99 Supreme Court notice that petition for writ of certiorari was filed on 5/19/99 by Appellant Juatassa Sims. Supct No.: 98-9537 [98-60126] (cmb)

12/2/99 Supreme Court order received granting petition certiorari [1301893-1] by Appellant Juatassa Sims on 11/29/99. [98-60126] (jbg)

CLAIMANT'S MEMORANDUM TO THE ADMINISTRATIVE LAW JUDGE

MEDICAL SUMMARY – JUATASSA SIMS – HEARING 9/12 JUDGE E. MORRISS

She is admitted to Senatobia Hospital on 2/7/92. This notes she is pregnant but was not certain about her last period. She has not been compliant with office visits. At about 16 weeks gestation, she was found to have gestational diabetes. She was not very compliant with her diet. She was also found to be a fibroid uterus. She has also been found to have thyroid enlargement as well as fetal and maternal tachycardia. She has had fluid retention with puffiness of the face and ankle edema. At the last pelvis ultrasound, she was found to have polyhydramnios. She has 1+ pitting edema of the lower extremities. She is treated with bedrest and is treated for hiatal hernia and tachycardia. Final diagnoses include thyroid dysfunction and iron deficiency anemia. (Exhibit 16)

She is readmitted on 2/25/92 after being seen in the office with mild hypertension at 130/90 and with complaint of being nervous and depressed. She is admitted for evaluation of pre-eclampsia, possibly amniocentesis and C-section. She is 40 years old and the baby is rather large. By the time of admission, blood pressure was 138/98. She has 1+ pitting edema and puffiness of the face. She has some superficial varicosities of her lower extremities. She was unable to lie on her back because of the large baby and had syncopal attacks with the same. She was extremely short of breath with lying back. She is extremely anxious and depressed. She underwent amniocentesis and her blood pressure was not well controlled

and she had synocopal attacks with blood pressure dropping 70/50 at one time with amniocentesis. She was more and more uncomfortable and finally requested a C-section. Epidural anesthesia was administered and she delivered. Polyhydramnios was present. She also had multiple fibroids. A bilateral partial salpingectomy was carried out by Pomeroy's method. (Exhibit 16)

She is seen in the ER of Senatobia Community Hospital on 3/4/92. Blood pressure is 150/96. She complains of her feet swelling and numbness in the left hand. She had a baby on 2/26/92. On exam, she has 4+ pitting edema in the feet and legs. Diagnoses are hyertension and peripheral edema. (Submit)

Records from Dr. Pravin Patel of 8/2/94 show her weight to be 226. She complains of low back pain since her C-Section when she received an epidural. On exam, she is tender at L5-S1. These notes also indicate carpal tunnel syndrome. On 8/15/94, weight is 222. An additional note, believed to be dated 8/15/94, indicates that ultrasound showed cholelithiasis. Chest x-ray revealed cardiomegaly and lumbar spine x-ray revealed mild degenerative joint disease. (Exhibit 17)

Included in Dr. Pravin Patel's records is a lab report of 8/17/94 which shows on the Thyroid Profile that TSH is low at .11, T4 is high at 12.9 and Free Thyroxine Index is high at 4.1. (Exhibit 17)

Dr. William Mayers does a consultative examination on 10/13/94. She reports back pain since April, 1992. She reports an epidural anesthetic in February, 1992 for a Cesarean section. The back pain then began in April and began as a sudden onset of pain which has been present

ever since. It is becoming progressively worse. The pain is constant every day but becomes severe once a month. It lasts for three to four days and she is bedridden during this time, only getting up to go to the bathroom. She remains in bed for about two days and the pain subsides. The pain radiates into the posterior aspect of both legs, left worse than right. Her left leg gives way sometimes when she is in severe pain. The leg goes numb sometimes. The back pain is aggravated by lifting, walking, standing or sitting. She can lift 10 pounds and carry it a short distance. She can walk one block and has to rest due to pain and shortness of breath. She can stand for 5 minutes. She can sit for twenty to thirty minutes if she has support of her back. She is not able to do mopping, but the other light house hold chores she does at her own pace. She cannot stand long enough to completely wash dishes. She reports an enlarged thyroid present for about 5 years. She has developed problems swallowing and sometimes talking. She has been told the medication would possibly shrink her thyroid and she would not have to have surgery, but this has become questionable. She is anxious over the possibility of surgery. She also reports weakness in her right arm extending from her shoulder to her hand. She has decreased grip strength in right hand and occasionally drops things. She reports shortness of breath with exertion. On exam, she is 64 inches tall and weighs 221. She is able to bend 45 degrees, extend 45 degrees and can rotate 80 degrees bilaterally. None of these caused neck pain. Her thyroid is profusely enlarged. Strength of the major muscle joints in the upper extremities is 5/5. Range of motion of shoulders and elbows is full. Grip strength, pinch and key pinch are 5/5

on left and 3/5 on the right. She has good grasp ability of both hands, but is slower on the right. In the back, there is vague tenderness in the lower lumbar area, more so on the right. Range of motion is 90 degrees forward bending, 20 degrees lateral bending bilaterally and she was able to extend 20 degrees. She was able to straight leg raise to 70 degrees in the supine position. Right straight leg raising caused pain down the lateral aspect of the right thigh. In the suprine position, she was able to straight leg raise to 40 degrees and this caused pain down the lateral aspect of the thigh. Dr. Mayers notes that it is interesting that in her history, she has more pain on the left but on exam, she has findings on the right. She was able to squat about three fourths of the way to the floor and could go no further because of pain in her back. Deep tendon reflexes were unobtainable. Reflexes from biceps, triceps, brachioradialis, knee jerks or ankle jerks could not be obtained. Pinprick is equal and normal except for the lateral aspect of the right lower leg. This corresponds with S1 dermatome. Impression is back pain, etiology undetermined, possibly degenerative disc disease, diffuse thyroid enlargement and weakness, right hand and arm, possibly carpal tunnel syndrome. X-ray of the lumbar spine reveal narrowed interspaces at L3-L4 and L4-L5. A small density is demonstrated overlying the left side of the pelvis, most likely representing calcification within a small cyst. (Exhibit 18)

Dr. Patel's notes of 5/15/95 indicate that an Echo showed LA to be slightly enlarged. The aortic valve was thickened. The LV post. wall is thin and its contraction is poor. IVS motion is abnormal. She is referred to Dr. Purdon. (Submitted with letter of 7/26/95)

Dr. J.S Purdon sees her on 5/25/95 on referral from Dr. Patel. She has a history of chest pain, shortness of breath and fatigue. Much of this may be deconditioning. She reports that she thinks she had rheumatic fever at about age 2. Echocardiogram is fine. Stress test is negative. She had a little chest pain within the first minute that was a sharp chest wall like pain that abated with activity. (Submit)

On 9/7/95, she is seen by Dr. Joe E. Morris, Ph.D. for a psychological evaluation. She is 5'5" and weighs 224. She exhibited a somewhat rigid posture and exhibited a number of nervous mannerisms. She would ring [sic] her hands, rub her arm and rub her eyes. From time to time, she exhibited a nervous laughter which appears to be masking a rather severe depression. She indicated she was in pain. She reports that her relations with others depend on how they treat her and she was very vague and non-specific in her responses on this particular issue. She does not actively seek contact with people outside of the home. She does not attend church and belongs to no group. There were overt behavioral indicators of anxiety in suggesting motor tension and autonomic hyperactivity. She had great difficulty reading and had to adjust her eyes very frequently to items on the table. Her overall emotional state was one of severe depression with mostly constricted affect, punctuated at times by nervous laughter. She stated one time that she had to laugh to cover up all the bad things that are going on. She averages about 5 hours of continuous sleep and wakes frequently because of nervousness. She admits to suicidal thoughts and was strongly encouraged to seek help at a mental health center. She stays depressed most of the time without mood

swings but does have explosive outbursts on a daily basis. Psychomotor activity is sluggish. She needs an eye exam as she has significant visual deficits. She may have hearing problems as a number of questions had to be repeated. On the WAIS-R, she obtained a Verbal IQ of 83, a Performance IQ of 72 and a Full Scale IQ of 81. These are in the borderline range and are felt to valid. Her Performance score is probably depressed due to visual deficits. On the WRAT-R, she obtained a score in Reading at the 23rd percentile, in Spelling at the 34th percentile and in Arithmetic at the 37th percentile. These are basically consistent with IQ scores though somewhat higher and more within the average range. On the MMPI, she obtained a profile indicative of depression with numerous somatic complaints as well as indications of withdrawal and poor reality testing. On the IPAT Depression Scale, she obtained a score of 10 which is indicative of very high levels of depression. On the IPAT Anxiety Scale, she obtained a score of 10 indicating very high levels of anxiety. On the BECK Depression scale, she obtained a score of 50 which is in the very severe range of depression. On the Symptom Inventory Checklist, she reports daily symptoms of, among others, nervousness, problems sleeping, irritability, lack of interest in sex, family, social and recreational activities, depression, crying spells, feelings of worthlessness and difficulties in concentration. Very often or two or three times a week she experiences feelings of terror or panic. In summary, Dr. Morris notes she seems easily frustrated with very low frustration tolerance. He had to repeat several items and simple instructions twice. She presents with symptoms of Panic Disorder. She may have difficulty responding

favorably to supervision and interacting with co-workers because of her emotional instability, daily explosive outbursts and her daily crying spells. Concentration and attention appear to be markedly affected. Diagnoses are panic disorder with agoraphobia (provisional), major depression, recurrent, severe without psychotic features and without interepisode recovery, rule out somatization disorder and undifferentiated somatoform disorder. She meets the criteria for Listing 12.04 with her depressive syndrome with sleep disturbance, feelings of worthlessness, difficulties concentrating or thinking and thoughts of suicide. She also meets Listing 12.06 with her panic attacks with motor tension, autonomic hyperactivity, apprehensive expectation and vigilance and scanning. These impairments in combination have resulted in a marked restriction of activities of daily living, marked difficulties in maintaining social functioning and deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner. She also probably meets Listing 12.07 with a history of multiple symptoms of several years duration beginning before age 30. On his Assessment, he rates her as markedly limited in six out of 8 of the Sustained Concentration and Persistence categories and moderately limited in the other two. The marked impairments include her ability to maintain attention and concentration for extended periods, her ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances, her ability to sustain an ordinary routine without special supervision, her ability to work in coordination or proximity with others without being distracted by them and her ability to complete a normal

workday or workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rests periods. She is moderately limited in three out of five of the Social Interaction categories. (Submit)

LIST OF DIAGNOSIS AND SELECTED POSITIVE FINDINGS

A. Mental

1. 2/7/92 – Senatobia Hospital – Is pregnant but is not sure of her last period.
2. 2/7/92 – Senatobia Hospital – Has not been compliant with office visits.
3. 2/7/92 – Senatobia Hospital – Has gestational diabetes and is not compliant with diet.
4. 2/25/92 – Senatobia Hospital – Nervous and depressed.
5. 2/25/92 – Senatobia Hospital – Is extremely anxious and depressed.
6. 10/13/94 – Dr. Mayers – She has more pain on the left but findings on the right.
7. 9/7/95 – Dr. Morris – Exhibited a somewhat rigid posture and a number of nervous mannerisms in ringing [sic] her hands, rubbing her arm and rubbing her eyes.
8. 9/7/95 – Dr. Morris – Exhibited a nervous laughter from time to time and this appears to be masking a rather severe depression.
9. 9/7/95 – Dr. Morris – Does attend church and belongs to no groups.

10. 9/7/95 – Dr. Morris – Does not actively seek contact with people outside of the home.

11. 9/7/95 – Dr. Morris – Overall emotional state was one of severe depression with mostly constricted affect, punctuated at times with a nervous laughter.

12. 9/7/95 – Dr. Morris – Reports she has to laugh to cover up al [sic] the bad things that are going on.

13. 9/7/95 – Dr. Morris – Averages 5 hours of continuous sleep each evening wakening frequently due to nervousness.

14. 9/7/95 – Dr. Morris – Admits to suicidal thoughts and was strongly encouraged to seek help at the mental health center.

15. 9/7/95 – Dr. Morris – Reports explosive outbursts on a daily basis.

16. 9/7/95 – Dr. Morris – Psychomotor activity is sluggish.

17. 9/7/95 – Dr. Morris – WAIS-R Verbal IQ of 83, Performance IQ at 72 and Full Scale IQ at 81 with WRAT-R scores consistent with this.

18. 9/7/95 – Dr. Morris – MMPI – Profile was indicative of depression with numerous somatic complaints as well as indications of withdrawal and poor reality testing.

19. 9/7/95 – Dr. Morris – IPAT Depression Scale score of 10, indicative of very high levels of depression.

20. 9/7/95 – Dr. Morris – IPAT Anxiety Scale score of 10, indicative of very high levels of anxiety.

21. 9/7/95 – Dr. Morris – BECK Depression Scale score of 50, in the very severe range.

22. 9/7/95 – Dr. Morris – Daily symptoms reported are nervousness, problems sleeping, irritability, lack of interest in sex, family, social and recreational activities, depression, crying spells, feelings of worthlessness and difficulties in concentration.

23. 9/7/95 – Dr. Morris – Two or three times a week, she experiences feelings of terror or panic.

24. 9/7/95 – Dr. Morris – Seems easily frustrated with very low frustration tolerance.

25. 9/7/95 – Dr. Morris – Has symptoms of panic disorder.

26. 9/7/95 – Dr. Morris – May have difficulty responding favorably to supervision or interacting with co-workers due to her emotional instability, her daily explosive outbursts and her daily crying spells.

27. 9/7/95 – Dr. Morris – Concentration and attention are maredkly [sic] affected.

28. 9/7/95 – Dr. Morris – Meets Listing 12.04, 12.06 and 12.07.

29. 9/7/95 – Dr. Morris – Rates her as markedly limited in six out of eight of the Sustained Concentration and Persistence categories and moderately limited in the other two.

B. Female Organs

1. 2/7/92 – Senatobia Hospital – Fibroid uterus.
2. 2/25/92 – Senatobia Hospital – C-Section was done and she had multiple fibroids requiring bilateral partial salpingectomy.

C. Endocrine System

1. 2/7/92 – Senatobia Hospital – Thyroid enlargement.
2. 8/17/94 – Dr. Patel – Thyroid profile shows TSH low at .11, T4 high at 12.9 and Free Thyroxine Index high at 4.1.
3. 10/13/94 – Dr. Mayers – Has developed problems swallowing and sometimes talking.
4. 10/13/94 – Dr. Mayers – Thyroid is profusely enlarged.

D. Cardiovascular

1. 2/7/92 – Senatobia Hospital – Fetal and maternal tachycardia.
2. 2/7/92 – Senatobia Hospital – Had 1+ pitting edema of the lower extremities.
3. 2/25/92 – Senatobia Hospital – Had syncopal episodes with blood pressure dropping to 70/50.
4. 2/25/92 – Senatobia Hospital – 1+ pitting edema and puffiness of the face.
5. 2/25/92 – Senatobia Hospital – Has some superficial varicosities of the lower extremities.
6. 3/4/92 – Senatobia Hospital – Has 4+ pitting edema and diagnosis includes peripheral edema of feet and legs.

7. 8/15/94 – Dr. Patel – Chest x-ray revealed cardiomegaly.
8. 5/15/95 – dr. Patel – Echo showed LA to be slightly enlarged, aortic valve thickened, LV posterior wall thin and contraction poor with VIA motion abnormal.
9. 5/25/95 – Dr. Purdon – History of chest pain, shortness of breath and fatigue, with stress test negative and Echo fine.

E. Digestive

1. 2/7/92 – Senatobia Hospital – Is treated for hiatal hernia.
2. 2/7/92 – Senatobia Hospital – Diagnosis includes iron deficiency anemia.
3. 8/15/94 – Dr. Patel – Ultrasound showed cholelithlasis.

F. Hypertension

1. 2/25/92 – Senatobia Hospital – 130/90 in the office and by time of admission, 138/98.
2. 3/4/92 – Senatobia Hospital – 150/96.

G. Musculoskeletal

1. 3/4/92 – Senatobia Hospital – Reports numbness in the left hand.
2. 8/2/94 – Dr. Patel – Back pain since epidural for C-Section.
3. 8/2/04 – Dr. Patel – Is tender at L5-S1.
4. 8/2/94 – Dr. Patel – Carpal tunnel syndrome also indicated in these notes.
5. 8/15/94 – Dr. Patel – Lumbar spine x-ray revealed mild degenerative joint disease.

6. 10/13/94 – Dr. Mayers – Reports back pain since 1992, becoming progressively worse.

7. 10/13/94 – Dr. Mayers – Indicates she has constant back pain abut [sic] it becomes severe once a month and lasts for three to four days at which time she is bedridden for about 2 days, only getting up to the bathroom.

8. 10/13/94 – Dr. Mayers – The pain radiates into the posterior aspect of both legs, left worse than right.

9. 10/13/94 – Dr. Mayers – Left leg gives way sometimes when she is in severe pain.

10. 10/13/94 – Dr. Mayers – Back pain is aggravated by lifting, walking, standing or sitting.

11. 10/13/94 – Dr. Mayers – Can lift 10 pounds and carry it a short distance.

12. 10/13/94 – Dr. Mayers – Can walk one block and has to rest due to pain and shortness of breath.

13. 10/13/94 – Dr. Mayers – Can stand for 5 minutes.

14. 10/13/94 – Dr. Mayers – Can sit for 20 to 30 minutes if she has support of her back.

15. 10/13/94 – Dr. Mayers – Reports weakness in right arm extending from her shoulder to her hand and has decreased grip strength.

16. 10/13/94 – Dr. Mayers – Is able to bend 45 degrees and can rotate 80 degrees.

17. 10/13/94 – Dr. Mayers – Grip strength, pinch and key pinch are all 5/5 left and 3/5 right.

18. 10/13/94 – Dr. Mayers – Grasp ability good but slower on the right.

19. 10/13/94 – Dr. Mayers – There is vague tenderness in the lower lumbar area, more so on the right.

20. 10/13/94 – Dr. Mayers – Range of motion is 90 degrees forward bending, 20 degrees lateral bending bilaterally and she is able to extend 20 degrees.

21. 10/13/94 – Dr. Mayers – SLR is 80 degrees in the supine position and right SLR caused pain down the lateral aspect of the right thigh.

22. 10/13/94 – Dr. Mayers – SLR in the supine position is 40 degrees and this caused pain down the lateral aspect of the thigh.

23. 10/13/94 – Dr. Mayers – She has more pain on the left but findings on the right.

24. 10/13/94 – Dr. Mayers – Was able to squat about 3/4 of the way to the floor.

25. 10/13/94 – Dr. Mayers – Deep tendon reflexes were unobtainable.

26. 10/13/94 – Dr. Mayers – Reflexes from biceps, triceps, brachioradialis, knee jerks or ankle jerks could not be obtained.

27. 10/13/94 – Dr. Mayers – Pinprick is equal and normal except in the lateral aspect of the right lower leg, which corresponds with S1 dermatome.

28. 10/13/94 – Dr. Mayers – X-ray of the lumbar spine revealed narrowed interspaces of L3-L4 and L4-L5.

29. 10/13/94 – Dr. Mayers – A small density is demonstrated overlying the left side of the pelvis, most likely representing calcification within a small cyst.

POINTS OF LAW

1. ***SGA?*** – There has been no SGA since October, 1991 when her employment at Sunflower ended because of complications with her pregnancy.

2. ***Severe Impairment?*** – Obviously, this lady is severe even in the medical sense with her multitude of impairments in multiple areas of her body. Her most severe impairments appear to be in regard to her endocrine system and her musculoskeletal system, and these, in combination with her other impairments, have resulted in severe depression and anxiety which further impact her and cause her to become even more severe.

3. ***Meeting or Equaling a Listing?*** – This lady meets **Listing 12.04** with positive findings in regard to her depression including not only Dr. Morris' observations of her, but also positive testing on the IPAT Depression Scale, the BECK Depression Inventory and the MMPI, as well as from her reported symptoms on the Symptom Inventory Checklist. In regard to the sub elements, she has anhedonia, sleep disturbance, feelings of worthlessness, difficulty concentrating and thoughts of suicide. This would qualify her under **A-1 a., c., f., g. and h.**, and only four of those are required to meet this Listing. Dr. Morris also indicated that her combination of impairments have resulted in a marked restriction of activities of daily living, marked difficulties in maintaining social functioning and deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner. This would show the presence of three of the **B** elements and only two are required.

Because of the above, it is submitted that she meets **Listing 12.04 A-1 a., c., f., g. and h.**, with the presence of **B-1 through 3**.

Dr. Morris also found that she met **Listing 12.06** with positive testing on the IPAT Anxiety Scale and with his observations showing the presence of motor tension, autonomic hyperactivity, apprehensive expectation and vigilance and scanning. He also diagnosed panic disorder with agoraphobia. This would qualify her under **Listing 12.06 A-1 a., b., c., and d**. She probably also meets **A-3**, as on the Symptom Inventory Checklist, she reports that two to three times a week she experiences feelings of terror or panic. The B elements are discussed above under **Listing 12.04**, and show the presence of **B-1 through 3**.

Dr. Morris also indicates from his extensive observation and testing that she meets **Listing 12.07** and here, she would probably qualify under **A-1 and A-3**, and she also has **B 1 through 3** present, as discussed above.

4. ***Ability to Perform Past Relevant Work Activity?*** – Her past relevant work has been as a cashier, shipping clerk, crimper at an auto parts manufacturing company and as a sewing machine operator. All of these would probably be in the light category. With her severe back pain, it is felt she could no longer do the required lifting of these jobs nor the required standing and walking of these jobs. The sewing machine job would have been seated, but she cannot do the required sitting of that job. She also has the decreased grip strength in her right hand as well as slow grasp ability which would further impact her ability to do her past relevant work.

   Additionally, with the restrictions placed on Mrs. Sims by Dr. Morris, she would not be able to do jobs at any exertional level, as there is not a significant number of jobs that would allow such restrictions to an employee.

5. ***Performance of Other Forms of SGA?*** – This lady would have to be restricted to sedentary work, due to her back pain with radiation into her lower extremities which would restrict her in the lifting and the standing and walking of light or greater work. However, with her decreased grip strength in the right hand and slow grasp ability, it is felt that she does not have the bilateral manual dexterity to do the required work in a sedentary job. She also has numbness and weakness in her arms which has been diagnosed as carpal tunnel syndrome and this would further impact her ability to do the required bilateral manual dexterity of sedentary work and the required lifting, on a regular and sustained basis. The applicable Social Security Rulings would be **83-10 and 83-11,** and there would also be applicable **20 C.F.R. 404, Sub Part P, App. 2, Section 201.00 (h)**.

   Additionally, as noted above, with the restrictions placed on her by Dr. Morris after extensive testing and observation, particularly in the Concentration and Persistence categories, there are no jobs existing in the national economy in significant numbers for an individual with these restrictions.

For the above reasons, it is submitted that this lady be found disabled with a disability onset date as of her last day worked which would be October, not the first, 1991, as she has been unable to work since that date because of her multitude of impairments, now further impacted by her anxiety and depression.

Respectfully submitted:

/s/ Gary R. Parvin
GARY R. PARVIN
Rt. 2, Box 149C
Coffeeville, MS 38922
610-628-6648
Ms. Bar Number 4034

[SEAL]
DEPARTMENT OF HEALTH & HUMAN SERVICES
Social Security Administration

Refer to: 587-48-0484

Office of Hearings and Appeals
100 W. Capitol Street
McCoy Federal Bldg., Suite 1014
Jackson, MS 39269
Telephone:
Date: Mar 19 1996

NOTICE OF DECISION – UNFAVORABLE

Jautassa R. Sims
P.O. Box 208
Como, MS 38619

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

If You Disagree With The Decision

If you do not agree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your requests right to the Appeals Council, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

Time To File An Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time To Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How An Appeal Works

Our regulations state the rules the Appeals Council applies to decide whether to review a case and in reviewing a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you may agree. The

Council **will** review your case if one of the reasons for review listed in our regulations exists.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision fully or partially favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

The Appeals Council Can Review The Decision On Its Own Motion

The Appeals council can review my decision even if you do not ask it to do so. If it decides to do that, the Council will mail you a notice about its review within 60 days from the date of this notice.

If No Appeal And No Review On The Appeals Council's Own Motion

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits, or not qualify for any benefits. My

decision could also be used to deny a new application for insurance benefits, if the facts and issues are the same. So, if you disagree with this decision, you should file an appeal within 60 days.

Do You Have Any Questions?

If you have any questions, you may call, write of visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (601) 227-8472. Its address is 784 East Govan Street (0B14), SUITE J (0B14), Grenada, MS. 38901.

Edward T. Morriss
Administrative Law Judge

Enclosures

cc:

Gary R. Parvin
Attorney at Law
Rt. 2, Box 149C
Coffeeville, MS 38922

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration
OFFICE OF HEARINGS AND APPEALS

DECISION

IN THE CASE OF	CLAIM FOR
	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
Jautassa R. Sims (Claimant)	
_____ (Wage Earner)	587-48-0484 (Social Security Number)

On August 3, 1994, the claimant protectively filed applications for a period of disability, disability insurance benefits, and supplemental security income. She alleges disability beginning April 1, 1992, due to degenerative joint disease of the lumbar spine and possible carpal tunnel syndrome. After initial and reconsideration denials, the claimant requested a hearing. A hearing was held before me on September 12, 1995, in Greenwood, Mississippi. The claimant and vocational expert Sam Cox appeared and testified. The claimant was represented by Gary Parvin, attorney at law.

ISSUES

The general issues are whether the claimant is entitled to a period of disability and disability insurance benefits under Sections 216(i) and 223, respectively, of the Social

Security Act, as amended; and whether the claimant is disabled under Section 1614(a)(3)(a) of the Act. The Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairment(s) which can be expected to either result in death or last for a continuous period of not less than 12 months.

The specific issues are whether the claimant was under a "disability" and, if so, when such disability commenced and the duration thereof; and whether the disability insured status requirements of the Act are met for the purpose of entitlement to a period of disability and disability insurance benefits.

EVALUATION OF THE EVIDENCE

The claimant was born on April 27, 1951, and was forty years old on the alleged onset date, April 1, 1992. She has a high school education and has worked as a cashier in a food store, order clerk for a distribution center, crimper at an auto parts manufacturing plant, and worker at a hosiery mill and at a chair manufacturing plant. She met the disability insured statues requirements on April 1, 1992, the alleged onset date, and continued to meet them through December 31, 1995. She has not engaged in substantial gainful activity since the alleged onset date, April 1, 1992.

At the hearing on September 12, 1995, the claimant testified that on a typical day she got her son off to school, went back to bed, and her mother came over to get her three year old to care for at her house when the claimant had nervous attacks (approximately three times a week).

She stated that she cleaned one room at the time, watched some television, cooked on some days, did the washing with her daughter's help, and did some shopping. In describing her problems, she stated that she has back pain daily which began two months after the birth of her three year old son. She said that three times a month the pain is severe and she is unable to lift even ten pounds or walk as much as one fourth mile without having pain and shortness of breath. She was taking Naprosyn. In addition, the claimant stated that she has had very bad nerves and depression for twenty years, worse since 1992. She said that she has thought of "checking into" a mental health facility. According to the claimant, she has chest pain, rapid heart beat, sleeping problems, and thyroid problems. She stated that she used a heating pad for her back and that medications made her lightheaded. She said that her thyroid (gland) enlarged and felt like a "big lump" daily and that, if she got nervous, she rested for forty-five minutes to two hours. The claimant further testified that since March 1992 she has thought of suicide and has developed a plan. She said that she gained from 180 pounds to 224 pounds and had no energy. According to the claimant, no surgery has been suggested by the doctor who thought her problems would go away.

A review of the medical record shows that the claimant, when approximately eight months pregnant, was admitted to the hospital on February 7, 1992, for evaluation and further management of her pregnancy. She was given Macrodantin for a urinary tract infection and started on Inderal for fetal tachycardia. She began to feel much better and was discharged on February 9, 1992. On February 25, 1992, near the projected delivery date of her baby,

she was admitted to the hospital with abdominal pain and was found to have a fibroid uterus, urinary tract infection, anemia, and gestational diabetes. She was treated and on February 26, 1992, delivered a baby boy by Caesarean section under epidural anesthesia. She also underwent bilateral tubal ligation. She was discharged on March 1, 1992. On March 4, 1992, the claimant presented to the emergency room complaining of her feet swelling, elevated blood pressure, and numbness in her left hand. Her blood pressure was 150/96 and she had 4+ pitting edema in her feet and legs. Diagnoses were hypertension and peripheral edema. Lasix was administered intramuscularly and she was given a prescription for Maxzine (Exhibit 16).

Office notes from Dr. Patel show that the claimant was seen on August 2, 1994, complaining of lower back pain two times a month since she had an epidural for a C-section. She said that two months after the epidural she developed chills up and down her spine. Examination revealed thyroidmegaly and tenderness in the L5-S1 area of the back. The doctor noted possible carpal tunnel syndrome. He prescribed Bactrim, Synthroid, Naprosyn, and Zoloft. On August 15, 1994, the doctor's impression was mild degenerative joint disease of the lumbosacral spine (Exhibit 17).

Dr. William Mayers saw the claimant on October 13, 1994, for a consultative examination. Her chief complaints were of back pain, thyroid problem, and weakness in her right arm. The claimant stated that she had an epidural anesthetic in February 1992, her back pain started in April 1992, and she has had it every day since then. She said that it is severe about one time a month, lasts for three or

four days, and causes her to be bedridden. She stated that the pain radiated into both legs, the left worse than the right. She said that, when she did not have severe pain, the pain was aggravated by lifting, walking, standing, or sitting, and that she could lift ten pounds, walk only one block (due to pain in her back and shortness of breath), stand for five minutes, and sit for twenty to thirty minutes with support to her back. She was taking Aleve, two to three times a day, for her pack pain. She said that she could do her housework (taking her time) except for mopping. The claimant had an enlarged thyroid, present for five years. She was on Synthroid and said that, because of the enlargement, she had developed problems swallowing and sometimes had difficulty talking. She said that she had been told that the Synthroid might shrink her thyroid (gland) and she might be able to avoid surgery. Finally, she stated that the weakness in her right arm extended from her shoulder to her hand. She had no pain in her arm or hand unless she lifted something, and she had decreased grip strength in her right hand and occasionally dropped objects. Physical examination revealed height 5'4", weight 221 pounds, and blood pressure 131/79. Strength of the major muscle groups was 5/5 bilaterally. Grip strength was 5/5 on the left and 3/5 on the right. Straight leg raising was negative to 70 degrees on the left and was positive at 40 degrees on the right. Dr. Mayers commented that this was interesting because the claimant said she had more pain on the left when she had severe pain but on physical examination she had findings on the right. The claimant walked with a perceptible limp but did not use an assistive device. She was able to squat about three-fourths of the way but no further because of

pain in her back. She could arise from this position and heel and toe walk without difficulty. Cranial nerves II-XII were intact. Deep tendon reflexes were not obtainable and Dr. Mayers could not obtain a reflex from biceps, triceps, brachioradialis, knee jerks, or ankle jerks. Pinprick was equal and normal bilaterally except for the lateral aspect of her right lower leg, corresponding with S1 dermatome. She had no decreased sensation of the right upper extremity. Dr. Mayers' impressions were: back pain, etiology undetermined, possibly degenerative disc disease; diffuse thyroid enlargement; and weakness, right hand and arm, possibly carpal tunnel syndrome. A chest x-ray was normal. Lumbar spine x-ray showed degenerative disc disease at L3-4 and L4-5 and a partially calcified cyst overlying the left side of the pelvis (Exhibit 18).

Office notes dated May 15, 1995, from Dr. Patel show that an echocardiogram showed LA slightly enlarged, aortic valve not thick – excursion within normal limits, mitral valve normal, LV post wall thin and its contraction poor. Dr. Patel referred her to two specialists (Exhibit 19)

On May 25, 1995, Dr. J. S. Purdon, a cardiologist, saw the claimant on referral from Dr. Patel. The claimant complained of a history of chest pain and some shortness of breath and fatigue. Dr. Purdon noted that much of this might be deconditioning. Physical examination revealed height 5'5 ½ ", weight 224, and blood pressure 130/70. A stress exercise test was negative at 7 Mets energy expenditure and 94% of target heart rate. No arrhythmias were noted and after the test the claimant felt fine. Echocardiogram showed chamber sizes and left ventricular systolic function within normal limits. The mitral inflow pattern

was at most borderline for diastolic dysfunction. No valvular abnormalities were appreciated and there was no evidence of effusion. After a thorough examination, Dr. Purdon diagnosed chest pain felt to be chest wall pain, possible element of reflux disease, hypothyroidism on treatment, and exogenous obesity. He commented the claimant's work-up was really negative for any sort of cardiac pain. He started her on Indocin 25 mg three times a day for five days, Pepcid 20 mg two times a day, and Flexeril one at bedtime for ten days (Exhibit 26).

On September 7, 1995, the claimant was seen by Dr. Joe Edward Morris, a psychologist, on referral from her representative, attorney Gary Parvin. On the Wechsler Adult Intelligence Scale-Revised (WAIS-R), the claimant obtained verbal, performance, and full scale IQ scores of 83, 72, and 81, respectively, which place her in the borderline range of intellectual functioning. On the Wide Range Achievement Test-Revised (WRAT-R), the claimant's scores on reading, spelling, and arithmetic were beginning of eleventh grade, beginning of eleventh grade, and beginning of tenth grade, respectively. These scores were somewhat higher than those on the WAIS-R and more within the average range. Dr. Morris stated that, cognitively, the claimant was able to understand and follow simple instructions and perform simple calculations. He said that she had symptoms of panic disorder and that she might have difficulty interacting with coworkers and receiving supervision because of her emotional instability. He diagnosed panic disorder with agoraphobia (provisional); major depressive disorder, recurring, severe, without psychotic features, without

interepisode recovery; undifferentiated somatoform disorder; borderline intellectual functioning; history of gestational diabetes, fibroid uterus, thyroid enlargement, carpal tunnel syndrome, and back pain (Exhibit 27).

After reviewing the evidence, I find that the claimant has "severe" impairments, degenerative disc disease of the lumbar spine, thyroid enlargement, possible carpal tunnel syndrome, exogenous obesity, depression, borderline intellectual functioning, and somatoform disorder. A psychiatric Review Technique form has been completed and is appended to the decision. It properly addresses the claimant's diagnoses of depression at section 12.04, borderline intelligence at 12.05, panic disorder at 12.06, and somatoform disorder at 12.07. In evaluating the severity of the impairments under the "B" criteria of the Listings, I find that the claimant has moderate restriction of activities of daily living; moderate difficulty in maintaining social functioning; mild to moderate difficulties with concentration and attention; and that she has never had episodes of deterioration in job settings. Although Dr. Morris diagnosed panic disorder, in his summary of the claimant's daily activities he stated that she was able to drive a car short distances, go to the store, do light shopping, use the telephone, watch television, read mysteries, keep up with the news, and handle money – indicating that if she does have panic disorder, it is not marked. I do not credit Dr. Morris' finding of severe major depression as there is no history of mental health treatment as would be expected for such a severe case of depression. Dr. Morris stated that the claimant's concentration and attention "appear to be at least markedly affected." However, he also stated that the claimant was

"cooperative and task oriented with good task persistence and completion." I acknowledge that her depression may cause moderate difficulties with functioning including mild to moderate difficulty with concentration and attention. The Claimant has back pain which she has attributed to an epidural she received during a Caesarean section in 1992. However, there has been no consistent treatment for this and no evidence of a serious back problem from the consultative examination. Regarding her enlarged thyroid, the doctor has not suggested surgery and has stated that he believed that with medication the thyroid gland problem would go away. The claimant has not had a positive diagnosis of carpal tunnel syndrome by electromyography. Based on the record, her mental impairments and physical impairments do not meet or equal a listing in Appendix 1.

The claimant's impairments prevent her from performing some basic work activities such as lifting heavy weights and doing work that involves a high level of concentration. However, I find that she is able to perform a reduced range of light work. In reaching this conclusion, I have specifically considered the claimant's subjective complaints, including pain. I considered the provisions of Regulations 404.1529 and 416.929, which stipulate that the effects of all symptoms, including pain, must be evaluated on the basis of a medically determinable impairment which can be expected to produce such symptoms. Further, I considered the provisions of Social Security Ruling 95-5p. Social Security Ruling 95-5p provides that all symptoms be considered in regard to their possible impact on the claimant's ability to function.

The claimant's daily activities, as described above in the report of the consultative examination by Dr. Mayers, in Dr. Morris' report, and at the hearing, indicate that the claimant's activities are only moderately restricted. The claimant is able to do household chores except mopping. Even though she has slightly decreased strength in her right hand, she can open a jar lid (if not tight), twist a doorknob, zip zippers, and button buttons. She had no joint tenderness of either hand. Range of motion of shoulders and elbows was full and strength in major muscle groups was 5/5 bilaterally. Although she could only squat three-fourths of the way down, she could heel and toe walk without difficulty and needed no assistive device for ambulating. As mentioned, there has been no consistent treatment for back trouble and there was no evidence of a serious back problem from the consultative examination. The heart specialist reported that the claimant's workup was negative for any sort of cardiac pain. According to the claimant's list of medications (undated), the claimant is taking Zoloft one a day for depression, Synthroid one a day for thyroid, and Advil and Aleve as needed for back pain. At the hearing, the claimant stated that she takes Naprosyn for back pain and that it makes her "lightheaded." However, there is no record of the claimant's complaining to doctors of adverse side effects of her medication. Based on the entire record, I find that the claimant's subjective complaints of pain and disability are not credible to the extent alleged.

At the hearing, vocational expert Sam Cox testified that the claimant's past work as a cashier/stock person was medium, semi-skilled; as an order picker/clerk was medium, unskilled; and as a clerk was medium, semi-

skilled. When presented with a hypothetical question posing an individual forty-four years old, with a twelfth grade education, able to do light work, with mild to moderate difficulty with concentration/attention due to pain, and moderate difficulty functioning due to depression, Mr. Cox stated that there are jobs that such an individual can do. He identified several representative suitable jobs in the light category and the their approximate incidence: counter attendant (unskilled), 410,000 in the nation, 5,000 in the state; cashier/checker (semi-skilled), 531,000 in the nation, 6500 in the state; and general office clerk (unskilled), 2,248,000 in the nation, 18,000 in the state. As to the cashier/checker job, the vocational expert testified that skills would transfer from claimant's past work.

Based on the claimant's chronic back pain and diagnoses of degenerative disc disease and possible carpal tunnel syndrome, I find that she would not be able to return to her past relevant work because the exertional demands of the work exceed her present residual functional capacity. When a claimant establishes that she cannot perform her past relevant work because of her impairments or because she has no past relevant work, the burden shifts to the Secretary to show that the claimant can perform a significant number of jobs existing in the national economy which are consistent with her medically determinable impairments, functional limitations, age, education, and work experience. The vocational expert identified a number of such jobs in the light exertional category above.

Accordingly, I find that claimant Jautassa R. Sims is not disabled, within the meaning of the Social Security Act.

FINDINGS

After careful consideration of the entire record, I make the following findings:

1. The claimant met the disability insured status requirements of the Act on April 1, 1992, the date the claimant stated became unable to work, and continues to meet them through December 31, 1995.

2. The claimant has not engaged in substantial activity since April 1, 1992.

3. The medical evidence establishes that the claimant has "severe" impairments, degenerative disc disease, thyroid enlargement, possible carpal tunnel syndrome, exogenous obesity, depression, borderline intelligence, and somatoform disorder, but that she does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.

4. The claimant's subjective complaints of pain and limitation are not credible to the extent alleged.

5. The claimant has the residual functional capacity to perform the physical exertion and nonexertional requirements of work except for being unable to lift more than 20 pounds and being unable to perform jobs precluded by mild to moderate difficulties with concentration and attention (20 CFR 404.1545 and 416.945).

6. The claimant is unable to perform her past relevant work as cashier/stock person or order picker/clerk.

7. The claimant's residual functional capacity for the full range of light work is reduced by being unable to perform work precluded by mild to moderate difficulties with concentration and attention.

8. On the alleged onset date, April 1, 1992, the claimant was 40 years old (now 44), which is defined as a younger person (20 CFR 404.1563 and 416.963).

9. The claimant has a high school education (20 CFR 404.1564 and 416.964).

10. Based on an exertional capacity for light work and the claimant's age, education, and work experience, the vocational expert identified jobs that she could perform.

12. The claimant was not under a "disability," as defined in the Social Security Act, at any time through the date of this decision (20 CFR 404.1520(f) and 416.920(f)).

DECISION

It is my decision that, based on the application protectively filed on August 3, 1994, the claimant is not entitled to a period of disability or disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act, and is not eligible for supplemental security income under sections 1602 and 1614(a) (3) (A) of the Act.

/s/ Edward T. Morriss
Edward T. Morriss
Administrative Law Judge

MAR 19, 1996
Date

OHA PSYCHIATRIC REVIEW TECHNIQUE FORM

NAME: Jautassa R. Sims SSN: 587-48-0484

Assessment is for: Current Evaluation

Administrative Law Judge's Signature Date

/s/ Edward T. Morriss MAR 19 1996

I. MEDICAL SUMMARY

A. Medical Disposition(s): RFC Assessment Necessary (i.e., a severe impairment is present which does not meet or equal a listed impairment)

B. Based Upon Category(ies): 12.04, 12.05, 12.06, 12.07

II. Reviewer's Notes (Does not apply to OHA)

III. DOCUMENTATION OF FACTORS THAT EVIDENCE THE DISORDER (Evaluation of the existence of a sign or symptom CLUSTER or SYNDROME for the Listed Disorder.)

PRESENT	ABSENT			
[ ]	[x]	A.	12.02	Organic Mental Disorders
[ ]	[x]	B.	12.03	Schizophrenic, Paranoid and other Psychotic Disorders
[x]	[ ]	C.	12.04	Affective Disorders
[x]	[ ]	D.	12.05	Mental Retardation and Autism
[x]	[ ]	E.	12.06	Anxiety Related Disorders

[x]	[ ]	F.	12.07	Somatoform Disorders
[ ]	[x]	G.	12.08	Personality Disorders
[ ]	[x]	H.	12.09	Substance Addiction Disorders

C. **12.04 Affective Disorders** – Disturbance of mood, accompanied by a full or partial manic or depressive syndrome, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

1. [ ] [x] [ ] Depressive syndrome characterized by at least four of the following:
   - a. [ ] Anhedonia or pervasive loss of interest in almost all activities, or
   - b. [ ] Appetite disturbance with change in weight, or
   - c. [ ] Sleep disturbance, or
   - d. [ ] Psychomotor agitation or retardation, or
   - e. [ ] Decreased energy, or
   - f. [ ] Feelings of guilt or worthlessness, or
   - g. [ ] Difficulty concentrating or thinking, or
   - h. [ ] Thoughts of suicide, or
   - i. [ ] Hallucinations, delusions or paranoid thinking

2. [ ] [x] [ ] Manic syndrome characterized by at least three of the following:
   - a. [ ] Hyperactivity, or
   - b. [ ] Pressures of speech, or
   - c. [ ] Flight of ideas, or
   - d. [ ] Inflated self-esteem, or

e. [ ] Decreased need for sleep, or
f. [ ] Easy distractibility, or
g. [ ] Involvement in activities that have a high probability of painful consequences which are not recognized, or
h. [ ] Hallucinations, delusions or paranoid thinking

3. [ ] [x] [ ] Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

4. [x] [ ] [ ] Other: depression

D. **12.05 Mental Retardation and Autism** – Significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the development period (before age 22), or pervasive developmental disorder characterized by social and significant communicative deficits originating in the developmental period, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

1. [ ] [x] [ ] Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded*
2. [ ] [x] [ ] A valid verbal, performance, or full scale I.Q. of 59 or less*

3. [ ] [x] [ ] A valid verbal, performance, or full scale I.Q. of 60 to 70 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function*
4. [ ] [x] [ ] A valid verbal, performance or full scale I.Q. of 60 to 70 inclusive or in the case of autism, gross deficits of social and communicative skills*
5. [x] [ ] [ ] Other: borderline intelligence

* NOTE: Items 1,2,3, and 4 correspond to Listings 12.05A, 12.05B, 12.05C, and 12.05D, respectively.

E. **12.06 Anxiety Related Disorders** – Anxiety as the predominant disturbance or anxiety experienced in the attempt to master symptoms, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

1. [ ] [x] [ ] Generalized persistent anxiety accompanied by three of the following:
   a. [ ] Motor tension, or
   b. [ ] Autonomic hyperactivity, or
   c. [ ] Apprehensive expectation, or
   d. [ ] Vigilance and scanning
2. [ ] [x] [ ] A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity, or situation
3. [ ] [x] [ ] Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror, and sense of impending doom

occurring on the average of at least once a week

4. [ ] [x] [ ] Recurrent obsessions or compulsions which are a source of marked distress
5. [ ] [x] [ ] Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress
6. [x] [ ] [ ] Other: some symptoms of panic disorder

F. **12.07 Somatoform Disorders** – Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms, as evidenced by at least one of the following:

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

1. [ ] [x] [ ] A history of multiple physical symptoms of several years duration beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly

2. [ ] [x] [ ] Persistent nonorganic disturbance of one of the following:

   a. [ ] Vision, or
   b. [ ] Speech, or
   c. [ ] Hearing, or
   d. [ ] Use of a limb, or
   e. [ ] Movement and its control (e.g., coordination disturbances, psychogenic seizures, akinesia, dyskinesia), or
   f. [ ] Sensation (e.g., diminished or heightened)

3. [ ] [x] [ ] Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury

4. [x] [ ] [ ] Other: focusing on and overexaggeration of somatic symptoms

IV. RATING OF IMPAIRMENT SEVERITY

A. "B" CRITERIA OF THE LISTINGS

THE FOLLOWING FUNCTIONAL LIMITATIONS (WHICH APPLY TO PARAGRAPH B OF LISTINGS 12.02-12.04 AND 12.06-12.08 AND PARAGRAPH D OF 12.05) EXIST AS A RESULT OF THE INDIVIDUAL'S MENTAL DISORDER(S).

NOTE: ITEMS 3 AND 4 BELOW ARE MORE THAN MEASURES OF FREQUENCY. DURATION AND EFFECTS OF THE DEFICIENCIES (ITEM 3) OR EPISODES (ITEM 4) ARE DISCUSSED IN THE DECISION.

Listing(s) under which the items below are being rated: 12.04, 12.05, 12.06, 12.07

FUNCTIONAL LIMITATION AND DEGREE OF LIMITATION

1. Restrictions of Activities of Daily Living:

None [ ] Slight [ ] Moderate [x] Marked* [ ] Extreme [ ] Insuff Evid [ ]

2. Difficulties in Maintaining Social Functioning:

None [ ] Slight [ ] Moderate [x] Marked* [ ] Extreme [ ] Insuff Evid [ ]

---

3. Deficiencies of Concentration, Persistence or Pace Resulting in Failure to Complete Tasks in a Timely Manner (in work settings or elsewhere):

Never [ ] Seldom [ ] Often [x] Frequent* [ ] Constant [ ] Insuff Evid [ ]

---

4. Episodes of Deterioration or Decompensation in Work or Work-Like Settings Which Cause the Individual to Withdraw from that Situation or to Experience Exacerbation of Signs and Symptoms (which may Include Deterioration of Adaptive Behaviors):

Never [x] Once/Twice [ ] Repeated* (3+) [ ] Continual [ ] Insuff Evid [ ]

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*Degree of limitation that satisfies the Listings: Extreme, Constant and Continual also satisfy that requirement.

B. Summary of Functional Limitation Rating for "B" Criteria

NO. OF FUNCTIONAL LIMITATIONS MANIFESTED AT THE LISTING LEVEL: [0] (The number must be at least 2 to satisfy the requirements of paragraph B in Listings 12.02, 12.03, 12.04 and 12.06 and paragraph D in 12.05; and at least 3 to satisfy the requirements in paragraph B in Listings 12.07 and 12.08.)

C. "C" Criteria of the Listings

2. If 12.06 Disorder (Anxiety Related)

PRESENT-ABSENT-INSUFFICIENT EVIDENCE

[ ] [x] [ ] Symptoms resulting in **complete** inability to function independently outside the area of one's home.

(If present is checked, the requirements in paragraph C of 12.06 are satisfied.)

[LOGO]
GARY R. PARVIN

ATTORNEY AT LAW
ROUTE 2, BOX 149C - COFFEEVILLE, MS 38922
1-800-748-8914 628-6648
September 12, 1996

Appeals Council
Office of Hearings & Appeals
5107 Leesburg Pike
Falls Church, VA 22041-3255

Re: Jautassa R. Sims SSN: 587-48-0484

Dear Ladies and Gentlemen:

On September 11, 1996, I received a call from Diane Shaw of the Grenada, Mississippi Social Security Office, indicating that Jautassa Sims, my client, had contacted her for the status on her case. Jautassa informed her that she had contacted your office and was informed that no appeal was ever made, and that her file had been shipped back to the Grenada, MS Social Security Office. Ms. Shaw then queried her computer and found that the file had, in fact, been shipped back to Grenada, MS and she also located the file in her office, with no appeal being included. I now enclose a copy of my copy of the March 26, 1996 letter/memorandum appealing the denial of Honorable Edward T. Morriss. I am now signing this copy, just as I did the original. I also enclose a Mailing Certificate from my Executive Secretary, Elizabeth Jobe, indicating that she did mail the letter/memorandum on March 26, 1996.

Apparently, my appeal letter was lost in the mail, or was misplaced in your mail room, as I understand that you have a huge backlog of cases.

I am this date mailing my client a Certificate indicating that she did receive her copy of the Appeal Letter shortly after March 26, 1996, allowing for mailing time, since we mailed her a copy of what we sent you. I will mail that to you as soon as received.

Please consider the Appeal Letter enclosed and forward your decision in due course.

Very truly yours,

/s/ Gary R. Parvin
GARY R. PARVIN

GRP/eaj
CC: Jautassa Sims
Diane Shaw, Grenada, MS SSA

[LOGO]
GARY R. PARVIN

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1-800-748-8914 628-6648
March 26, 1996

Appeals Council
Office of Hearings & Appeals
5107 Leesburg Pike
Falls Church, VA 22041-3255

Re: Jautassa R. Sims

SSN: 587-48-0484

Dear Ladies and Gentlemen:

I now appeal to you the unfavorable decision of March 19, 1996, entered by Honorable Edward T. Morriss,

Administrative Law Judge, of the Jackson, Mississippi OHA.

In reference to the claimant's mental dysfunctioning, the relevant Exhibits are Exhibits 16, 18 and 27. Exhibit 16 is relevant because it shows, potentially, a memory impairment in reference to an entry of February 7, 1992, in which Senatobia Hospital notes that the claimant is pregnant, but she cannot tell them when she had her last period. It is further relevant in its note that she has not been compliant with office visits and its further note [sic] that she has gestational diabetes and is not compliant with her diet, as these two notes show a lack of judgment, at the very least, and taking all three of these notes together, the same would constitute the beginning evidence for the later conclusion of a serious mental disorder which is known to impact memory and which is known to impact judgment.

Then, there is the Senatobia Hospital note of February 25, 1992, also in Exhibit 16, that she is nervous and depressed and that she is extremely anxious and depressed.

The Administrative Law Judge ignored all five of the above entries from Exhibit 16, not mentioning them, whatsoever in his opinion.

Further, from Exhibit 18, on October 13, 1993, in Dr. Mayer's consultative examination on this case, he finds it significant that she has more pain on the left, but positive findings on the right. What could possibly explain that?

It is too easy to say that she is faking it or malingering it or incredible, because a serious mental illness can just as

easily cause that finding by Dr. Mayers, and that is the obvious somatoform disorder.

Then, the undersigned had the claimant go to Dr. Joe Edward Morris, because he is an approved consultative examiner of the Commissioner, while also being the most extensive in his testing and reporting, known to the undersigned. In reference to her anxiety, Exhibit 27, constituting Dr. Morris' report, notes her somewhat rigid posture and her number of nervous mannerisms in regard to wringing of her hands, rubbing her arm and rubbing her eyes, all of which would be evidence in regard to an anxiety disorder. He also notes her nervous laughter from time to time and indicates that this appears to be her masking a rather severe depression. In regard to her functioning, she does not attend church and belongs to no community groups and does not actively seek contact with people outside of her home, all of which is further evidence of one or more serious mental disorders. He further states that her overall emotional state was one of severe depression with mostly constricted affect, which was punctuated with the aforementioned nervous laughter, at times. She even told Dr. Morris that she had to laugh to cover up all the bad things that are going on. In regard to her sleep disturbance, she wakens frequently due to nervousness and averages about 5 hours of sleep each night. She admitted to him in regard to her suicidal thoughts and Dr. Morris strongly encouraged her to seek help at her local mental health center. She did report explosive outbursts on a daily basis and Dr. Morris observed that her psychomotor activity was sluggish.

Further, from Exhibit 27, Dr. Morris reports her Verbal IQ at 83, Performance IQ at 72 and Full Scale IQ at 81 with the Achievement Test Scores consistent with that.

Had this been the usual testing that DDS arranges in the State of Mississippi, testing would have ended with the IQ and Achievement Testing; however, because he was doing this at the request of the undersigned, those constraints were not applied and he was to do the indicated testing thereafter. In doing so, he administered the MMPI, which this individual was able to complete, because of her intellectual functioning being high enough to allow such. Her profile is reported to be indicative of depression with numerous somatic complaints as well as indicative of withdrawal and poor reality testing, all of which is obviously indicating one or more severe mental disorders.

Dr. Morris did not stop with the MMPI, nor the Achievement Testing, nor the IQ testing, but proceeded to administer the IPAT Depression Scale, and here, her score of 10, with that being the highest score allowed, shows very high levels of depression.

Dr. Morris did not stop there, as depression was not the only indicated item from his examination and from the other records already mentioned herein, and he thereby also administered the IPAT Anxiety Scale and there, she scored the highest score, again, which is a 10, indicative of very high levels of anxiety.

Dr. Morris did not stop there, as he wanted to give another depression test, and did so, in reference to the BECK Depression Scale. Here, she scored a 50, which is in the very severe range.

Consistent with the previously reported portion of this examination, and his testing, her daily symptoms, reported by her, are nervousness, problems sleeping, irritability, lack of interest in sex, family, social and recreational activities, depression, crying spells, feelings of worthlessness and difficulties in concentration. All of those symptoms, daily, are known symptoms of a severe anxiety disorder or a severe depressive disorder. If that were not so, they would not be listed as such, as required elements in Listing 12.04, nor 12.06.

Further, consistent with the anxiety observations and the anxiety scoring, above, she reports that two or three times a week, she experiences feelings of terror or panic. In other words, a report of such symptom, by a person who does not have the anxiety observations by Dr. Morris, previously stated above, and who does not have the anxiety testing results, previously reported above, should receive no credibility, but one with all of the above, in conjunction with that reported symptom, has thereby shown the proof for why the symptom is present. Dr. Morris went on to indicate that she had, obviously, symptoms of panic disorder. He also reported that she seems to be easily frustrated with very low frustration tolerance, in reference to his observation of her during the testing and examination.

Further, consistent with her lack of judgment and marked concentration and attention deficits, which Dr. Morris found, she even failed to keep her first appointment with Dr. Morris, but reported to him that she was ill at that time, but the fact is she did not call him, nor the undersigned's office to report the same so that it could be

rescheduled. This was done when Dr. Morris called the undersigned's office.

Based upon his extensive examination, observation and testing, Dr. Morris diagnoses panic disorder with agoraphobia (Provisional), major depressive disorder, recurrent, severe, without psychotic features, without interepisode recovery, rule out somatization disorder, and undifferentiated somatoform disorder, all on Axis I. He further diagnoses borderline intellectual functioning on Axis II. On Axis III, he notes the other medical history, for the same was provided him by the undersigned in regard to the actual records or the undersigned's Medical Summary that is within Exhibit 23. That Summary, when provided to him, would not have included, on his testing of September 7, 1995, obviously his own reporting of such testing, as is constituted in the Summary within Exhibit 27 in the claim file, since that was delivered to the Administrative Law Judge, after Dr. Morris' testing and reporting, on the date of the hearing.

Dr. Morris then reports that it is his opinion that she meets Listing 12.04 due to her depression with sleep disturbance, feelings of worthlessness, difficulties concentrating or thinking, and thoughts of suicide, and that she meets Listing 12.06, in his opinion, because of her panic attacks and because of her motor tension, autonomic hyperactivity, apprehensive expectation, along with vigilance and scanning, both of which, that is, depression and anxiety, have caused her to meet the required B elements in reference to having a marked restriction of activities of daily living, marked difficulties in maintaining social functioning and deficiencies of concentration,

persistence or pace resulting in frequent failure to complete tasks in a timely manner.

In reference to her somatoform disorder, he states his opinion that she probably meets that because of her history of multiple physical symptoms of several years duration that began before she reached age 30.

The Administrative Law Judge gives a one half page, one paragraph, report of Dr. Morris' Exhibit on the bottom half of page 5 of his opinion. It is significant for what it does not mention from that report. It does not mention the MMPI testing, it does not mention the IPAT Depression Scale Score, it does not mention the IPAT Anxiety Scale Score, it does not mention the BECK depression Scale Score, it does not mention the Daily Symptoms, and it does not mention the weekly symptoms, nor does it give an accurate representation of the balance of what is in Dr. Morris' report. In fact, the Administrative Law Judge basically accepted the IQ scores and the Achievement Testing and ignored the balance of it, which was his first error, as, he could not ignore the other testing and the rest of the report, and come to the same conclusion that he did. In other words, the undersigned is stating that the ALJ first erred by ignoring significant portions of Dr. Morris' testing and reporting which were necessary to not be ignored, in order to get the appropriate picture, that is, an accurate picture of the suffering of this individual and the causation of such suffering, mentally. The second error was that the Administrative Law Judge, after ignoring the most important and significant portions of the testing and reporting, then substituted his opinion, as a layman, for that of the expert, Dr. Joe E. Morris, who is not only recognized as an expert by the

undersigned, but is also recognized as one, by the Commissioner, as an approved consultative examiner for mental disorders and mental functioning.

The Administrative Law Judge further ignored the significance of the notes first mentioned above from Senatobia Hospital on February 27, 1992, within Exhibit 16, showing the potential of a memory impairment and the potential of a lack of judgment, as well as the entries of February 25, 1992, in that same Exhibit, that actually stated that it was their observation that she was nervous, extremely anxious and depressed, which obviously points directly toward the eventual testing that was done by Dr. Morris in reference to her anxiety and in reference to her depression. The somatoform disorder was indicated as a possibility, by Dr. Mayers, in Exhibit 18, with his observation that she had more pain on the left, but more findings on the right, which the Judge, as a layman, decided to accept that, in the face of Dr. Morris' extensive reporting and testing, to be evidence to be a liar, malingerer, or a less than credible person. Had he not been such a layman, but an expert in the field, he would have recognized that this was an indication of a potential for a somatoform disorder under Listing 12.07.

In other words, the indicated testing, on a careful review of the existing record, which was done by Dr. Morris, was certainly indicated in the two separate Senatobia Hospital records and strongly implied, from Dr. Mayers' examination on that comment mentioned above. The fact that the testing then was consistent, in results, with what had already been observed and stated, at 2 different medical sources, is not to be ignored by the undersigned, but, was

ignored by the ALJ, and that, along with his other ignoring, shows why, and how, he justified substituting his opinion for that of Dr. Morris.

The undersigned realizes that the Judge then went through his justification on page 6 of his opinion, while continuing to ignore the significant testing and other portions of the report of Dr. Morris, as stated above. A careful reading of his justification on page 6 will show you, the undersigned believes, that he is simply substituting his opinion for that of Dr. Morris and simply making findings consistent with those required in order to cause a denial of the case, which was the result he wanted to reach, for whatever reason. The undersigned believes it was because he did not pay proper attention, and give proper weight, to the other relevant testing and reporting by Dr. Morris. For instance, he does not "credit Dr. Morris' finding of severe major depression as there is no history of mental health treatment as would be expected for such a severe case of depression (page 6 of ALJ opinion)." That is a classic example of an opinion substitution, by a layman for an expert. The fact that she had no prior history of mental health treatment is, to experts in the field, as explained to the undersigned, the potential for just the opposite conclusion from the ALJ. In fact, it is well known among experts that the most seriously mentally ill have no appreciation or understanding of their illness and that this is reflected in their not seeking treatment, because they have no judgment and do not know, comprehend, or understand, that they need such treatment. Often, it is only through the intervention of family members or friends that such occurs. This lady was basically avoiding everyone with her withdrawn

nature, as a result of her illnesses, and was bothering no one, committing no crimes, had no psychosis, and was not one that would automatically receive such intervention from family members, friends or law enforcement.

One does not have to be so seriously mentally ill that they are in need of obvious inpatient treatment to qualify under Listings 12.04, 12.06 or 12.07, from the very elements that they state, but that appears to be the standard that the ALJ is indicating, potentially.

On the official SSA-4734-F4-SUP form of the Social Security Administration, Dr. Morris shows, within Exhibit 27, that Jautassa Sims is markedly limited in her ability to carry out detailed instructions, markedly limited in her ability to maintain attention and concentration for extended periods, markedly limited in the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, markedly limited in the ability to sustain an ordinary routine without supervision, markedly limited in the ability to work in coordination or proximity to others without being distracted by them, and markedly limited in the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, and that she is markedly limited in her restriction of activities of daily living, has marked difficulties in maintaining social functioning, and frequently has deficiencies of concentration, persistence or pace resulting in failure to complete tasks in a timely manner (in work settings or elsewhere) and that she, once or twice, had episodes of deterioration or decompensation in work-like settings causing her to

withdraw from that situation or to experience an exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

Contrary to that, the ALJ, in substituting his opinion, changed the marked findings to moderate on page 6 of his opinion in reference to activities of daily living, social functioning and gave a mild to moderate conclusion on concentration and attention, and found that she had never had episodes of deterioration in job settings. The episodes of deterioration that sub part B-4 of the Listings requires is not restricted only to job settings, but this shows, that once again, he ignored portions of it and thereby applied a different standard than that which is directed by the appropriate Regulations. This was in addition to substituting his opinion for those of the approved consultative examiner for the Commissioner, as well as he did it in this case in reference to the request of the undersigned, without limitations on testing. Additionally, he ignored most of the other marked findings mentioned above that Dr. Morris had, all of which was based upon his total examination, observation and testing of her for several hours in length and his review of the other records or the undersigned's Summary of them in the claim file.

The Administrative Law Judge, still on page 6, goes on to then indicate, by perceiving certain selected portions from Dr. Morris' report, that she was not any more than moderately restricted in her daily living activities, by reporting what Dr. Morris included in his report from the self report of the claimant. This ignores, again, the overall impact of the entire report, examination and testing. The fact is that Dr. Morris is the one who is more qualified to

make a marked finding versus a moderate one, or to make a moderate one versus a marked one, than a lay ALJ, which also would apply to the undersigned as a lay attorney. The fact that she would engage in the activities as Dr. Morris reported, does not justify the ALJ in concluding a moderate restriction of activities of daily living versus a marked one, for the frequency in which she engages in them, and her pace in engaging in them, should also be considered, and that is obviously what Dr. Morris did, as a direct result of his testing, examination and observation of her for several hours.

The ALJ then goes on with another classic substitution justification, for a lay opinion to be substituted for the expert opinion, in reference to his justification on the concentration and attention to be changed from marked to mild to moderate by indicating that since she was "cooperative and task oriented with good task persistence and completion" with Dr. Morris, that she could not be any more than mildly to moderately impacted in her concentration and attention. Again, this ignores the full import of the examination, observation and testing by Dr. Morris over several hours, and is attempting to say that in that one situation that may last three hours in length, that because she could do that then, with specific instructions from the undersigned to do her best so that the testing would be valid, and to cooperate with Dr. Morris, so that the testing would be valid, that she could do this for 8 hours a day, 5 days a week, and for longer than three months, at the least, for a successful work attempt, even, is an unsupported substitution of a lay opinion by a layman for that of the expert, for it does not so flow, even with common sense reasoning.

In the ultimate, this denial decision is a direct result of a lay Administrative Law Judge substituting his opinion for that of the recognized expert of the Commissioner and of the undersigned, and in so doing, he has used improper reasoning that does not even hold up to the test of "common sense" which even laymen can have and can use.

Further, Jautassa Sims suffers from, as the ALJ finding number 3, on page 8 states a severe impairment in reference to degenerative disc disease, a severe impairment in reference to thyroid enlargement, a severe impairment in reference to possible carpal tunnel syndrome, a severe impairment in reference to exogenous obesity, a severe impairment in reference to her depression, a severe impairment in reference to borderline intelligence, and a severe impairment in reference to her somatoform disorder, but this was never posed to the Vocational Expert by the Administrative Law Judge in his hypotheticals. The hypothetical upon which he relies begins at the bottom of page 7 and goes to the top of page 8 of his opinion and basically restricts the hypothetical individual of 44 years of age with a 12th grade education to be able to do light work with mild to moderate difficulty with concentration/attention due to pain, and moderate difficulty functioning due to depression. This ignored what he indicated at the top of page 7 when he found that she was able to perform a reduced range of light work, but states in the hypothetical that she is able to do light work, which strongly implies the full range since it is not reduced or stated to be reduced. Further, his finding 5 is inconsistent as it recognizes only the inability to lift more than 20 pounds and the inability to perform jobs precluded by

mild to moderate difficulties with concentration and attention.

Further, the required OHA Psychiatric Review Technique form shows that, in reference to concentration deficiencies, on page 6 of the same, he chose often, meaning that she often has deficiencies of concentration, persistence or pace resulting in failure to complete tasks in a timely manner (in work settings or elsewhere).The hypotheticals of the ALJ did not include that specific finding and are therefore not proper and are a legal standard violation in regard to the Act, the Regulations, and relevant Circuit Court Decisions.

Further, none of his hypotheticals included all of the conditions from which she suffered, not even all of those that he recognizes in his finding number 3 as severe, which is another obvious error. Further, his finding of only thyroid enlargement is incorrect as Exhibit 16 does show that on February 7, 1992, but Exhibit 17 on August 17, 1994, shows her thyroid profile to be low on one item and high on two others, so she actually has been suffering from a thyroid disease of some kind. Exhibit 18 shows some slight impact that might be occurring, if she was at work, with her report to Dr. Mayers of her having problems swallowing and talking, sometimes, and he finds that the thyroid is profusely enlarged at that point, which could explain the causation for those very symptoms that she complained of, for which she is given absolutely no credit by the ALJ. Additionally, he gave her no credit for her digestive limitations noted in Exhibits 16 and 17, respectively, as hiatal hernia, iron deficiency anemia, and cholelithiasis.

Further, he gives no real credit to Jautassa Sims for her back pain radiating to the lower extremities versus a somatoform disorder causing the same pain, which is just as severe and disabling as that caused by a back disorder that is physical, and this is in spite of Dr. Morris' extensive testing, examination and reporting and in spite of Dr. Mayers' statement in reference to his findings on one side when her worst pain is on the other side. The ALJ gave her no credit for her reporting to Dr. Mayers of her lifting limit of 10 pounds and her walking distance of one block, her standing limitation of 5 minutes and her sitting limitation of 20 to 30 minutes with support of her back, gave her no credit for her reported weakness in the right arm as she told Dr. Mayers, although he found grip strength, pinch and key pinch 40% reduced on the right, with a 3/5 rating, while the left was completely normal at 5/5, as it should be. He gave her no credit for her grasp ability on the right being slower, that Dr. Mayers also found. He also gave her no credit for her right straight leg raising causing pain down the lateral aspect of the right thigh, as observed by Dr. Mayers, and he gave no credit for her being unable to squat more than $^{3}/_{4}$th's of the way to the floor as reported by Dr. Mayers. Further, he gave no mention or credit to the fact that Dr. Mayers reports that the deep tendon reflexes were unobtainable, and that the same was true also in the upper extremities and lower extremities.

The ALJ gave no credit, nor real mention, to Dr. Mayers' finding (Exhibit 18) that although the pin prick was equal and normal, in most places, it was not in the lateral aspect of the right lower leg, corresponding with the S1 dermatome. If degenerative disc disease, is a finding, and

would include Dr. Mayers' x-ray report showing narrowed interspaces at L3-L4 and L4-L5, then the undersigned would not have much compiaint there, but it is the overall weight of the report of Dr. Mayers, even, that the ALJ also ignores as far as its import, when he then indicates that this lady, 5 days a week and 8 hours a day can do light work with the maladies that she suffers from either in her musculoskeletal system, or in her mental functioning, or both, with the somatoform disorder absolutely explaining the pain and the limitations she would have in her physical system, if the physical testing does not support it, but in her case, it is obviously a mixed bag, potentially as a result of a combination of factors so that the physical testing is not really complete, even now. For instance, this individual, without any income and without any Medicaid or other medical insurance coverage, cannot receive the same sort of testing and treatment that the ALJ and the undersigned can, for she has no way to obtain it without income, and without medical insurance. The undersigned's experience has been that whenever a well meaning doctor requests such at a hospital, for a person without insurance and without the ability to pay, the hospital refuses to do the MRI and the more expensive tests, as well as a myelogram, and may even refuse to do one simple x-ray, much less flexion and extension x-rays. In that vein, the entire import of the ALJ opinion, in addition to being to substitute his lay opinion for that of Dr. Morris, and to selectively perceive only that from Dr. Mayers' report which agrees with him, and ignore that which does not, and then to use the lack of treatment of the claimant as his justification for her lack

of credibility, partially, is simply not applying the proper standard that exists within the 5th Circuit.

For authority in regard to the ALJ substituting his lay opinion for that of the experts, please see: ***ALLEN V. SCHEWIKER*** [sic], 567 F.Supp. 1204 (D. Del. 1983), ***BUCK V. HECKLER***, No. 81-372 (D. Vt. 1983) cited in Unempl. Ins. Rep. (CCH), 15,256, ***CRESS V. HECKLER***, 579 F.Supp. 644 (E.D. Pa. 1984), ***EIDEN V. SECRETARY OF H.E.W.***, 616 F.2d 63 (2d Cir. 1980), ***FOWLER V. CALIFANO***, 596 F.2d 600 (3d Cir. 1979), ***QUINONES V. SECRETARY OF H.H.S.***, 567 F.Supp. 188 (E.D. N.Y. 1983), ***STEFFANICK V. HECKLER***, 570 F.Supp. 420 (D. Md. 1983), ***TRESSLER V. SCHWEIKER***, No. 82-1106 (M.D. Pa. 1983) cited in Unempl. Ins. Rep. (CCH), New Matter, 15,059, ***VAN HORN V. SCHWEIKER***, 717 F.2d 871 (3d. Cir. 1983), ***WELLACE V. SECRETARY OF H.H.S.***, 722 F.2d 1150 (3d Cir. 1983), ***SMITH V. CALIFANO***, 637 F.2d 968 (3d. Cir. 1981), ***LUND V. WEINBERGER***, 520 F.2d 782 (8th Cir. 1975), ***WILSON V. CALIFANO***, 617 F.2d 1595 (4th Cir. 1980), ***KENT V. SCHWEIKER***, 710 F.2d 110 (3d. Cir. 1983), ***GOVER V. MATHEWS***, 574 F.2d 772 (3d. Cir. 1978), ***SCHAAF V. MATHEWS***, 574 F.2d 157 (3d. Cir. 1978), ***LEWIS V. CALIFANO***, 616 F.2d 73 (3d. Cir. 1980), ***KLUG V. WEINBERGER***, 514 F.2d 423 (8th Cir. 1975), ***GRABLE V. SECRETARY OF H.E.W.***, 442 F.Supp. 465 (W.D. N.Y. 1977), ***ALBRIGHT V. SCHWEIKER***, No. 91-C-3151 (N.D. Ill. 1982) cited in Unempl. Ins. Rep. (CCH), Transfer Binder for February-December, 1983, 14,624, ***ROOT V. HECKLER***, 618 F.Supp. 76 (D. Del. 1985), ***SOUZA V. HECKLER***, 622 F.Supp. 182 (D.R.I. 1985), ***GILLILAND V. HECKLER***, 786 F.2d 178 (3d Cir. 1986), ***OPPENHEIM V. FINCH***, 495 F.2d 396, 397 (4th Cir. 1974), ***MCLAIN V.***

SCHWEIKER, 715 F.2d 866, 869 (4th Cir. 1983), ***NEVAREZ V. SECRETARY OF H.H.S.***, 603 F.Supp. 1032 (D.P.R. 1985), ***GRIMMET V. HECKLER***, 607 F.Supp. 502 (S.D. W. Va. 1985), ***BUTTRON V. HECKLER***, 610 F.Supp. 763 (S.D. N.Y. 1985), ***ROUSEY V. HECKLER***, 771 F.2d 1065 (7th Cir. 1985), and ***DRAGUN V. HECKLER***, 603 F.Supp. 813 (W.D. Pa. 1985). In regard to his relying on the fact that she did not seek treatment for her conditions as a basis for denying her, this very same situation occurred in reference to a Jackson, Mississippi OHA case called ***LOVELACE V. BOWEN***, and it appears that the Jackson OHA will never learn the lesson of it, as judged from this and other opinions received by the undersigned from that office. The case is ***LOVELACE V. BOWEN***, 813 F.2d 55 (5th Cir. 1987). The case finds that where the claimant cannot afford prescribed treatment or medicine, and can find no way to obtain it, the condition that is disabling in fact, continues to be disabling in law. It went on to state that "The medicine or treatment an indigent person cannot afford is no more a cure for his condition that [sic] if it had never been discovered." (813 F.2d 59) The Court went on, in explanation for that quote, to indicate that decisions to that effect had already been rendered in the 4th, 8th and 10th Circuits, and then stated the obvious, when it says "To a poor person, a medicine that he cannot afford to buy does not exist" (813 F.2d 59), and then went on to state that to hold otherwise "ignores economic reality" (813 F.2d 59). In other words, the undersigned is saying if the ALJ cannot deny her because she can't get the treatment that will cure her, it is inconsistent to say that he can deny her when she did not get the treatment that would not have cured her, but would have better

documented her case, when the same is not available to her as a poor person, with no income and with no insurance to pay for such testing or treatment. Further, the ALJ, in doing as he did with Dr. Morris' extensive testing, reporting and examination, excluded the properly determinable mental impairment in violation of 5th Circuit Law as shown in the cases of ***FORD V. SECRETARY OF H. H. S.***, 659 F.2d 66 (5th Cir. 1981) and ***STRICKLAND V. HARRIS***, 615 F.2d 1103 (5th Cir. 1980).

Although the list of argued errors could continue on and on, the undersigned will only submit one other, and that is that this case was decided at Step 5, where the burden of proof has shifted to the Commissioner. The methodology used here, by the ALJ, of substituting his opinion for that of the Commissioner's and the undersigned's expert, Dr. Morris, while selectively perceiving only that portion of Dr. Mayers' exam, as the Commissioner's consultative examiner, that he agreed with, while ignoring the other portions that he did not agree with, as a basis for satisfying the shifted burden of proof, is totally out of line with the requirements of the Regulations and the applicable Circuit Court decisions, such as, from the 5th Circuit in which this case was heard, ***HERRON V. BOWEN***, 788 F.2d 1127 (5th Cir. 1986).

Respectfully submitted:

/s/ Gary R. Parvin
GARY R. PARVIN
Ms. Bar Number 4034

GRP/eaj

cc: Juatassa Sims

CERTIFICATE

This is to certify that I mailed the appeal letter dated March 26, 1996, on March 26, 1996, postage prepaid to Appeals Council, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255.

/s/ Elizabeth Jobe
Elizabeth Jobe
Executive Secretary to
Honorable Gary R. Parvin

(LOGO) SOCIAL SECURITY ADMINISTRATION

Refer to: TAHBP
587-48-0484

Office of Hearings and Appeals
5107 Leesburg Pike
Falls Church, VA 22041-3255

MAY 13 1997

ACTION OF APPEALS COUNCIL
ON REQUEST FOR REVIEW

Mrs. Jautassa Sims
P. O. Box 208
Como, MS 38619

Dear Mrs. Sims:

The Appeals Council has considered the request for review of the Administrative Law Judge's decision issued on March 19, 1996.

Social Security Administration regulations provide that the Appeals Council will grant a request for review where: (1) there appears to be an abuse of discretion by the Administrative Law Judge; (2) there is an error of law; (3) the Administrative Law Judge's action, findings, or conclusions are not supported by substantial evidence; or (4) there is a broad policy or procedural issue which may affect the general public interest. The regulations also provide that where new and material evidence is submitted with the request for review, the entire record will be evaluated and review will be granted where the Appeals Council finds that the Administrative Law Judge's actions, findings, or conclusion is contrary to the weight of the evidence currently of record (20 CFR 404.970 and 416.1470).

The Appeals Council has concluded that there is no basis under the above regulations for granting your request for review. Accordingly, your request is denied and the Administrative Law Judge's decision stands as the final decision of the Commissioner of Social Security in your case. In reaching this conclusion, the Appeals Council has considered the applicable statutes, regulations, and rulings in effect as of the date of this action.

The Appeals Council has also considered the contentions raised in your representative's letter dated March 26, 1996, but concluded that the contentions do not provide a basis for changing the Administrative Law Judge's decision.

If you desire a court review of the Administrative Law Judge's decision, you may commence a civil action by filing a complaint in the United States District Court for the judicial district in which you reside within sixty (60) days from the date of the receipt of this letter. It will be presumed that this letter is received within five (5) days after the date shown above unless a reasonable showing to the contrary is made. The complaint should name the Commissioner of Social Security as the defendant and should include the Social Security number(s) shown at the top of this notice. The right to court review is provided for in sections 205(g) and 1631(c)(3) of the Social Security Act, as amended (42 U.S.C. 405(g) and 1383(c)(3)).

If you cannot file your complaint within 60 days, you may ask the Appeals Council to extend the time in which you may begin a civil action. However, the Council will only extend the time if you provide a good reason for not

meeting the deadline. Your reason(s) must be set forth clearly in your request.

If a civil action is commenced, the Commissioner must be served by sending a copy of the summons and complaint by registered or certified mail to the General Counsel, Social Security Administration, Room 611, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. (See rules 4(c) and (i) of the Federal Rules of Civil Procedure). In addition, you must serve the United States Attorney for the district in which you file your complaint and the Attorney General of the United States, as provided in the Federal Rules of Civil Procedure.

Sincerely yours,

ORIGINAL SIGNED BY
Peter N. Dowd
Administrative Appeals Judge

cc:
Gary R. Parvin

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

JUATASSA SIMS, Plaintiff

v. No. 2:97CV094-B-B

COMMISSIONER OF SOCIAL
SECURITY, Defendant

REPORT AND RECOMMENDATIONS

(Filed Nov. 25, 1997)

On November 20, 1997 oral argument was heard by the magistrate judge in the above entitled action at Oxford pursuant to 28 U.S.C. §636(b)(4) and Local Rule M-5(c), at which plaintiff and defendant Commissioner were represented by their respective counsel.

This matter is before the court on an application by the plaintiff seeking judicial review under 42 U.S.C. §405(g) of the final decision of the Commissioner of Social Security denying her claims for disability insurance benefits under Title II of the Social Security Act and supplemental security income disability benefits under Title XVI.

The record shows that the plaintiff was born on April 27, 1951; that she has a high school education; and that her work experience has been as a cashier in a food store, order clerk at a distribution center, crimper at an auto parts manufacturer, and factory work at a hosiery mill and chair manufacturing plant. She has coverage for purposes of the special earnings requirement of Title II of the Act through December 31, 1995. The plaintiff last worked

on April 1, 1992, her claimed onset date of disability as a result of anxiety/panic disorder, depression, thyroid enlargement, cardiovascular system impairment, digestive system impairment, hypertension, degenerative joint disease in her lumbar spine, and carpal tunnel syndrome.

FINDINGS OF THE ALJ

Applying the sequential evaluation process, 20 C.F.R. §404.1520 (1992), the Administrative Law Judge (ALJ) found that plaintiff has not engaged in substantial gainful activity since April 1, 1992, and that the medical evidence establishes that plaintiff has degenerative disc disease of the lumbar spine, thyroid enlargement, possible carpal tunnel syndrome, exogenous obesity, depression, borderline intellectual functioning, and somatoform disorder, but that these impairments do not meet the listings.

The ALJ found that the plaintiff has the residual functional capacity to perform the exertional and nonexertional requirements of a reduced range of light work activity, reduced by mild to moderate difficulties with concentration and attention; and that plaintiff is unable to perform her past relevant work as a cashier/stock person or order picker/clerk. Having found the plaintiff unable to perform her past relevant work, the burden shifts to the Commissioner to show that she can perform a significant number of jobs existing in the national economy. Based on vocational expert testimony, it was concluded that plaintiff could perform such jobs as counter attendant, cashier/checker, general officer [sic] clerk. (Findings, TR 12-21).

LAW AND ARGUMENT

The court's review is limited to whether or not substantial evidence supports the Commissioner's decision *Richardson v. Perales*, 402 U.S. 389 (1971). Substantial evidence must be "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*, at 401. Conflicts in the evidence are to be resolved by the Commissioner – if there is substantial evidence to support the Commissioner's decision then the decision must be affirmed, even if there is evidence in the record which may support a contrary result. *Selders v. Sullivan*, 914 F.2d 614, 617 (5 Cir. 1990).

The Commissioner must apply a five-step sequential evaluation process to determine if a claimant is capable of engaging in substantial gainful activity: (1) a claimant who is working will not be found disabled no matter what the medical findings are; (2) a claimant will not be found disabled unless he has a severe impairment; (3) a claimant whose impairment meets or equals an impairment listed in Appendix 1 of the regulations will be found disabled regardless of vocational factors; (4) a claimant who is capable of performing her prior relevant work will not be found disabled; and (5) if the claimant cannot perform her prior relevant work as a result of her impairment, then factors such as her age, education, past work experience and residual functional capacity must be considered to determine whether she can do other work. *Villa v. Sullivan*, 895 F.2d 1019, 1022 (5 Cir. 1990). A finding that the claimant is or is not disabled at any step of the process terminates the evaluation. *Harrell v. Bowen*, 862 F.2d 471, 475 (5 Cir. 1988). The burden of proof is on

the claimant for the first four steps, and then shifts to the Commissioner at step five. *Anderson v. Sullivan*, 887 F.2d 630, 632-33 (5 Cir. 1989).

At the hearing, plaintiff's primary contention was that there was only one examination and report of plaintiff's mental condition, that of Dr. Morris, and therefore the ALJ should have adopted his findings of marked limitations rather than substitute his own lay opinion. Counsel for the plaintiff also argued that contrary to the Commissioner's assertion that Dr. Morris was the only person noting a mental condition, the record contains several references to a mental problem – TR 120, 132, 146, and 155.

The Commissioner argued at the hearing that there was other evidence to support the ALJ's finding that plaintiff had only slight to moderate limitations from her mental conditions. For instance, plaintiff indicated throughout her papers that she is disabled because of her back pain which began with the epidural administered at her son's birth (TR 68, 191). She has never sought any mental health treatment despite her contention that she is completely debilitated by depression and panic disorder. Although she contends that she cannot afford such treatment, and that she does not receive Medicaid (TR 210-211), she does not indicate that she ever sought such treatment. Further, as discussed in the Commissioner's brief, the extent of plaintiff's treatment history consists of her hospitalization for the cesarean birth of her child in early 1992, three office visits with Dr. Pravin P. Patel, a general practitioner, and a one time cardiac consultative examination with Dr. J.S. Purdon. There is no record of any prior treatment for a mental condition, and Dr. Joe Ed

Morris, who is the only examiner to note a mental impairment, has a documented history with Social Security of making similar findings for claimants referred by plaintiff's attorney.

The court also notes that Dr. Morris' finding that plaintiff is borderline mentally retarded does not comport with the rest of the record. For instance, Dr. Mayers found plaintiff to be cooperative, and to answer questions intelligently (TR 124). Plaintiff's testimony at the hearing was articulate, informed and intelligent (TR 177-217). Plaintiff even described herself as "smart" (TR 154, 209). This evidence contradicts Dr. Morris' finding and test results that she is suffering from borderline IQ and provides substantial evidence from which the ALJ could make a determination that her IQ is higher than the test implies. *See Muse v. Sullivan*, 925 F.2d 785 (5 Cir. 1991) (ALJ can determine IQ tests to be invalid if evidence supports that determination).

Thus, Dr. Morris' findings are controverted by other evidence, and the ALJ did not err in finding that only part of Dr. Morris' report should be adopted.

Other arguments raised in the briefs, but not argued at the hearing shall be addressed as follows.

Selected Use of the Record

Plaintiff complains that the ALJ selectively ignored the many references throughout the record to plaintiff's mental condition, particularly those set forth in Dr. Morris' report. Plaintiff contends that the ALJ ignored Dr. Morris' findings regarding her anxiety and depression.

The ALJ accepted Dr. Morris' findings of severe depression, somatoform disorder, and borderline intellectual functioning (TR 17). However, the ALJ rejected the severity and degree of limitation found by Dr. Morris because plaintiff had never been treated for depression as one would expect if it were as severe as Dr. Morris' found (TR 17). Further, despite Dr. Morris' findings regarding plaintiff's IQ, plaintiff reported that she was a straight "A" student throughout school (TR 154), and was described as "intelligent" by at least one observer (TR 64), and had a past work history of jobs requiring average intelligence (TR 189-190). This evidence is inconsistent with Dr. Morris' findings and belies plaintiff's claim that the ALJ selectively ignored the evidence.

Consultative Examination

Plaintiff contends that peculiarities in the medical evidence, particularly found in Dr. Mayers' report, should have alerted the ALJ to the necessity of ordering a consultative examination to explore the possibility of somatoform disorder as a cause for the irregularities, citing *Latham v. Shalala*, 36 F.3d 431 (5 Cir. 1994). Particularly, plaintiff states that Dr. Mayers' report that plaintiff complained of more pain on the left side of her body, but the objective findings indicated a weakness on the right, should have alerted the ALJ to a possible somatoform disorder.

The ALJ is not required to order consultative examinations unless the plaintiff has raised "the requisite suspicion" that the examination is necessary to discharge his responsibility to fully develop the record. *Haywood v.*

Sullivan, 888 F.2d 1463, 1472 (5 Cir. 1989). The ALJ is not required to investigate all possible disabilities. *Leggett v. Chater*, 67 F.3d 558, 566 (5 Cir. 1995). Further, the ALJ has complete discretion over whether or not additional tests or medical evidence are necessary and a consultative examination is not required unless "the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision . . . " 20 C.F.R. §404.1519a; *Anderson v. Sullivan*, 887 F.2d 630, 634 (5 Cir. 1987).

Defective Hypothetical

Plaintiff argues that the ALJ found plaintiff's conditions of degenerative disc disease, thyroid enlargement, carpal tunnel syndrome, obesity, depression, borderline intelligence, and somatoform as severe impairments, but did not pose these impairments in the form of a hypothetical to the vocational expert.

Whether or not the Commissioner carried the burden of proof at this step in the process depends upon the validity of the hypothetical questions posed to the vocational expert and whether the questions reasonably incorporated the disabilities recognized by the ALJ. *See Morris v. Bowen*, 864 F.2d 333, 336 (5 Cir. 1988). The Fifth Circuit has recently articulated a test for determining whether or not a defective hypothetical may constitute reversible error as follows:

> "Unless the hypothetical question posed to the vocational expert by the ALJ can be said to incorporate reasonably all disabilities of the claimant recognized by the ALJ, and the claimant or his representative is afforded the opportunity to correct deficiencies in the ALJ's

> questions by mentioning or suggesting to the vocational expert any purported defects in the hypothetical questions (including additional disabilities not recognized by the ALJ's findings and disabilities recognized but omitted from he [sic] question), a determination of non-disability based on such a defective question cannot stand."

Bowling v. Shalala, 36 F.3d 431, 436 (5 Cir. 1994).

The first hypothetical posed to the VE was as follows:

> "Assume I find the claimant is 44 years old. And a 12th grade education. And assume I find she can perform light work. And – okay. Assume I find a mild to moderate difficulty with concentration and attention due to pain. She has moderate difficulty functioning due to depression and anxiety. Under that hypothetical, are there any jobs she could perform?"

(TR 214). The vocational expert answered that there were a number of jobs and listed them with the numbers available in the national economy (TR 214). The other two hypothetical questions added severe difficulty with concentration due to pain, depression and anxiety and the VE responded that no jobs would be available to her. Plaintiff's counsel was present and could have added all of her claimed disabilities, regardless of what the ALJ ultimately found to be severe impairments, yet counsel posed no questions to the VE.

The ALJ is not a Medical Expert

This argument is simply a different slant on plaintiff's complaints that the report of Dr. Morris should have

been adopted in its entirety. The regulations grant the ALJ considerable discretion in his review of the medical evidence, and where as here there is substantial evidence to support a decision contrary to one of plaintiff's physicians, this court must affirm it.

It is therefore recommended that the decision of the Commissioner be affirmed and the complaint dismissed with prejudice.

The parties are referred to Local Rule M-3(a) for the applicable procedure in the event any party desires to file objections to the findings and recommendations herein contained. The parties are warned that any such objections are required to be in writing and must be filed within ten days of this date. Failure to timely file written objections to the proposed findings, conclusions and recommendations contained in this report will bar an aggrieved party, except upon grounds of plain error, from attacking on appeal unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5 Cir. 1996).

Respectfully submitted, this the 24th day of November,

/s/ Eugene M. Bogen
UNITED STATE
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

JUATASSA SIMS

Plaintiff

NO. 2:97CV94-B-B

V.

KENNETH S. APFEL,
Commissioner of Social Security

Defendant

FINAL JUDGMENT

(Filed Jan. 12, 1999)

Upon consideration of the file and records in this case, the court finds that the report and recommendation of the United States Magistrate Judge dated November 24, 1997, was on that date duly served by regular mail upon counsel of record for the plaintiff and the defendant. On December 11, 1997, this court received an objection to the Magistrate Judge's report and recommendation from the plaintiff. Upon due consideration, the court finds that the plaintiff's objection is without merit and that the report and recommendation of the United States Magistrate Judge should be approved and adopted as the opinion of the court. It is therefore ORDERED:

> that the report and recommendation of the United States Magistrate Judge dated November 24, 1997, is approved and adopted as the opinion of the court, and that the proposed findings of fact and conclusions of law therein set out are adopted as the findings of fact and conclusions of law of the court; and

that the final decision of the Commissioner of Social Security is affirmed, and that this action is dismissed with prejudice.

THIS, the 9th, day of January, 1998.

/s/ Neal B. Biggers, Jr.
NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60126
Summary Calendar

JUATASSA SIMS,

Plaintiff-Appellant,

versus

KENNETH S. APFEL,
COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 2:97-CV-94-B

(Filed Nov. 6, 1998)

Before POLITZ, Chief Judge, STEWART and PARKER, Circuit Judges.

PER CURIAM:*

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Juatassa Sims appeals the district court's affirmance of the Commissioner's denial of her application for disability insurance benefits, contending that the administrative law judge: (1) failed to afford proper weight to a psychologist's opinion that she was severely depressed; (2) improperly excluded certain of her impairments in assessing her residual function capacity; and (3) should have ordered a consultative examination to assess her mental impairments. We affirm.

We lack jurisdiction to review Sims's second and third contentions because they were not raised before the Appeals Council.[1] The first contention is without merit because the ALJ is entitled and expected to determine the credibility of medical experts and to weigh their opinions accordingly.[2] Concluding that the findings of the ALJ are supported by substantial evidence, the judgment appealed is AFFIRMED.[3]

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[1] **Paul v. Shalala,** 29 F.3d 208 (5th Cir. 1994).

[2] **Greenspan v. Shalala,** 38 F.3d 232 (5th Cir. 1994).

[3] **Villa v. Sullivan,** 895 F.2d 1019 (5th Cir. 1990).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60126

JUATASSA SIMS

Plaintiff - Appellant

v.

KENNETH S APPEL, COMMISSIONER
OF SOCIAL SECURITY

Defendant - Appellee

Appeal from the United States District Court for the
Northern District of Mississippi, Oxford

ON PETITION FOR REHEARING

(Filed Feb. 18, 1999)

Before POLITZ, Chief Judge, STEWART and PARKER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is denied.

ENTERED FOR THE COURT:

/s/ Henry A. Politz
Chief Judge

Supreme Court of the United States

No. 98-9537

Juatassa Sims,

Petitioner

v.

Kenneth S. Apfel, Commissioner of Social Security

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 29, 1999
